RETIREMENT SECURITY FOR AMERICAN FAMILIES

"If you work hard your whole life, you ought to have every opportunity to retire with dignity and financial security. And as a nation we ought to do all we can to ensure that folks have sensible, affordable options to save for retirement."
-- President Barack Obama

As many as 78 million working Americans—about half the workforce—don't have a retirement savings plan at work. Fewer than 10 percent of those without plans at work contribute to a plan of their own. Our nation needs to do more to help families save and give them better choices to reach a secure retirement.

Today, President Barack Obama and Secretary Tim Geithner announced new steps to make it easier for American families to save for retirement. These new initiatives will complement the president's major legislative proposals to boost participation in IRAs and match retirement savings. The Department of the Treasury will:

- Expand opportunities for automatic enrollment in 401(k) and other retirement savings plans,
- Make it easier for more than 100 million families to save a portion or all of their tax refunds,
- Enable workers to convert their unused vacation or other similar leave into additional retirement savings, and
- Help workers and their employers better understand the available options for tax-favored retirement saving through clear, easy-to-understand language.

Together, these steps will expand the range of choices for workers who want to save and will make saving easier for millions of Americans.

NEW INITIATIVES TO HELP FAMILIES SAVE

(1) Expand Automatic Enrollment in 401(k) and Other Retirement Savings Plans: Under automatic 401(k) plans, employers directly deposit a small percentage of each paycheck into workers' retirement accounts. Employees maintain full choice over whether and how much they want to save. Each employee can choose to opt out of the plan or save a different amount, and employers can easily match employee contributions. Automatic enrollment boosts participation in 401(k) retirement plans from about 70 percent to more than 90 percent, and it is particularly effective in increasing the participation of low-income and minority workers. But while nearly half of larger companies with 401(k) plans have adopted automatic enrollment, fewer medium-sized or small businesses have done so. The Administration will

- **Streamline the process for 401(k) plans to adopt automatic enrollment.** Plan sponsors typically seek Internal Revenue Service approval of plan amendments to ensure legal compliance. By issuing pre-approved automatic enrollment language, the IRS will allow plan sponsors to amend their plans to adopt automatic enrollment more quickly, without the need for case-by-case approval by the IRS.

- **Make it easier to increase saving over time.** A promising approach to boosting retirement savings is to gradually increase automatic worker contributions over time. For example, workers could dedicate a portion of their pay raises to retirement savings or be put on a path to save a higher percentage of their pay every year, while remaining free to stop the increases or opt out entirely at any time. Treasury and the IRS are releasing a ruling explaining how 401(k) plans can use this automatic increase feature.

- **Allow automatic enrollment in SIMPLE-IRAs.** The SIMPLE-IRA combines the basic elements of 401(k) plans and IRAs, creating an easily administrable retirement plan that small businesses can offer to their employees. An estimated 3 to 4 million SIMPLE-IRA accounts exist, but workers are not automatically enrolled. Treasury and IRS are now issuing guidance to help interested employers automatically enroll employees in SIMPLE-IRA plans so long as employees are free to opt out.

(2) Create Easier Ways to Save Tax Refunds: More than 100 million families receive federal income tax refunds each year. Averaging more than $2,000, tax refunds present a unique opportunity for families to save. Taxpayers can already instruct the IRS to directly deposit their refunds and dedicate a portion to an IRA or other savings vehicle. Today, the Treasury and IRS announced that taxpayers will have another savings option beginning in early 2010 -- the ability to use their refunds to purchase U.S. savings bonds simply by checking a box on their tax return, without having to open an account at Treasury or take any other action, and even if the taxpayer doesn't have a bank account. The savings bonds would be mailed to the taxpayer. Taxpayers will be able to purchase bonds in their own names beginning in 2010 and to add co-owners such as children or grandchildren beginning in 2011.

(3) Allow Unused Leave to Be Converted to 401(k) Savings: Every year, millions of workers leave their jobs and receive substantial payments, often in cash, for unused vacation or other similar leave. For many employees, this money could easily be saved. Treasury and the IRS are issuing two rulings today describing how employers can allow their employees to contribute those amounts to their 401(k) plan. As an alternative, the rulings also give employers the option of making their own contribution of these amounts to their employees' 401(k) or other plan.

(4) Explain Saving Options: Employees changing jobs and receiving payments from a retirement plan face a number of choices, including a tax-free "rollover" of their benefits to another retirement account. These choices are not always well understood. Today, Treasury and the IRS are issuing a plain-English road map for rollovers to help workers keep their savings in tax-favored retirement plans or IRAs until they are ready to retire, rather than withdrawing cash earlier, subject to tax penalties. The road map is an updated model notice for plans to give departing employees. It clearly explains how to roll over plan balances, the key decisions, and the tax consequences. In addition, the IRS has created new user-friendly web site materials to help employers select an appropriate retirement plan and to help employees better understand the benefits of saving for retirement.

To read the Treasury and IRS rulings and materials, please visit http://www.irs.gov/retirement.

BUILDING ON EXISTING OBAMA RETIREMENT PROPOSALS

The Obama Administration is committed to giving tens of millions more Americans more and better choices to save for retirement through their jobs and receive tax benefits for doing so. The president will continue to work to expand and strengthen employment-based retirement security. Today's steps complement two important initiatives included in President Obama's budget:

- **Create Automatic IRAs:** IRAs are intended to give a tax-favored saving opportunity to the millions of workers -- about half the American work force -- who have no workplace retirement plan. Yet fewer than 1 out of 10 workers who are eligible to make tax-favored contributions to an IRA actually contribute to an IRA, while 9 out of 10 workers automatically enrolled in a 401(k) plan continue to make contributions. When enacted by Congress, the Administration's proposal will automatically enroll workers without workplace retirement plans in IRAs through payroll deposit contributions at the workplace. The contributions will be voluntary -- employees will be free to opt out -- and matched by the Savers Tax Credit for eligible families.

- **Reform and Expand the Savers Credit to Match Retirement Savings:** The expanded Savers Tax Credit will match the retirement savings of millions of families. It will match half of families' savings up to $500 per individual each year and deposit the tax credits directly into the individual's 401(k) plan account or IRA. The credit will be available to low- and middle-income working families, including those who earn too little to owe income taxes.

Part 1

Section 401.—Qualified Pension, Profit-Sharing, Stock Bonus Plans, etc.

Automatic Contribution Increases under Automatic Contribution Arrangements

Rev. Rul. 2009-30

ISSUES

1. Will default contributions to a profit-sharing plan fail to be considered elective contributions merely because they are made pursuant to an automatic contribution arrangement under which an eligible employee's default contribution percentage automatically increases in plan years after the first plan year of the eligible employee's participation in the automatic contribution arrangement based in part on increases in the eligible employee's plan compensation?

2. Will default contributions under an automatic contribution arrangement fail to satisfy the qualified percentage requirement (including uniformity and minimum percentage requirements) relating to a "qualified automatic contribution arrangement" under section 401(k)(13) of the Internal Revenue Code (providing an automatic enrollment nondiscrimination safe harbor) or the uniformity requirement relating to an "eligible automatic contribution arrangement" under section 414(w) (permitting 90-day withdrawals) merely because default contributions are made pursuant to an arrangement under which the default contribution percentage for all eligible employees increases on a date other than the first day of a plan year?

FACTS

Situation 1

Employer X maintains Plan A, a profit-sharing plan intended to satisfy the requirements of sections 401(a), 401(k), and 401(m), and maintained on a calendar-year basis. Plan A is not intended to satisfy the requirements to be a qualified automatic contribution arrangement or eligible automatic contribution arrangement.

Under Plan A, any eligible employee of Employer X may affirmatively elect to receive his or her compensation entirely in cash or to have Employer X make specified contributions on the eligible employee's behalf to Plan A in lieu of receiving those amounts as cash compensation. Subject to certain limitations set forth in Plan A, the eligible employee may designate the amount of these elective contributions as a percentage of the eligible employee's "plan compensation," defined under Plan A as base pay (excluding overtime, bonuses, and other special compensation).

Under Plan A, if any eligible employee of Employer X does not affirmatively elect to receive cash or to have a specified amount contributed to Plan A, default contributions are

automatically contributed to Plan A (with a corresponding reduction in the eligible employee's cash compensation) beginning with the first pay period of the first plan year of the eligible employee's participation in the automatic contribution arrangement. For that first plan year, the default contribution percentage is 4 percent of plan compensation. Any eligible employee may elect at any time not to make elective contributions (including not to make default contributions) or to have Employer X contribute to Plan A a different percentage of plan compensation.

Employer X usually provides annual increases in base pay for its employees effective for pay periods beginning on or after the employment anniversary date for each employee. Under Plan A, for plan years after the first plan year of the eligible employee's participation in the automatic contribution arrangement, the default contribution percentage is automatically increased beginning with the first pay period that begins on or after the eligible employee's employment anniversary date. The increase in the default contribution percentage is equal to the greater of (1) 1 percentage point, or (2) a number of percentage points calculated as 30 percent of the percentage increase in the eligible employee's base pay for such first pay period over the eligible employee's base pay for the immediately preceding pay period (rounded to the nearest whole percentage). However, under Plan A, the default contribution percentage may never exceed 11 percent. For example, the default contribution percentage for an employee with default contributions beginning in 2009 would increase by 1 percentage point each plan year for pay periods beginning on or after the employee's employment anniversary date (to 5 percent in 2010, 6 percent in 2011, etc., up to 11 percent in 2016 and later plan years), even if his or her base pay were not to increase. If the employee's base pay were to increase by at least 5 percent during one or more plan years before 2016, the default contribution percentage would increase to 11 percent even earlier.

Eligible employees are provided notices satisfying the timing and content requirements of section 1.401(k)-1(e)(2)(ii) of the Income Tax Regulations that explain the default contribution percentage, automatic increases in the default contribution percentage in plan years after the first plan year, and the eligible employees' right to elect to have no elective contributions (including no default contributions) made to Plan A or to alter the amount of those contributions.

Plan A provides that elective contributions are immediately nonforfeitable and, if the eligible employee has not attained age 59-1/2, cannot be distributed prior to the eligible employee's death or severance from employment, except in the case of hardship. Plan A also provides that, for each eligible employee, Employer X will make matching contributions to Plan A on account of the eligible employee's elective contributions up to a specified percentage of the eligible employee's plan compensation.

Plan A provides that default contributions and related matching contributions will, absent a contrary election, be invested in a qualified default investment alternative (QDIA), as described in section 2550.404c-5 of Department of Labor regulations.

Situation 2

Employer Y maintains Plan B, a profit-sharing plan intended to satisfy the requirements of sections 401(a), 401(k), and 401(m), and maintained on a calendar-year basis. Plan B is also

intended to satisfy the requirements to be a qualified automatic contribution arrangement and an eligible automatic contribution arrangement.

Under Plan B, any eligible employee of Employer Y may affirmatively elect to receive his or her compensation entirely in cash or to have Employer Y make specified contributions on the eligible employee's behalf to Plan B in lieu of receiving those amounts as cash compensation. Subject to certain limitations set forth in Plan B, the eligible employee may designate the amount of these elective contributions as a percentage of the eligible employee's "plan compensation," defined under Plan B.

Under Plan B, if any eligible employee of Employer Y does not affirmatively elect to receive cash or to have a specified amount contributed to Plan B, default contributions are automatically contributed to Plan B (with a corresponding reduction in the eligible employee's cash compensation) beginning with the first pay period of the first plan year of the eligible employee's participation in the automatic contribution arrangement. For that first plan year, the default contribution percentage is 3 percent of plan compensation. Any eligible employee may elect at any time not to make elective contributions (including not to make default contributions) or to have Employer Y contribute to Plan B a different percentage of plan compensation.

Employer Y usually provides annual increases in compensation for its employees effective for pay periods beginning on or after April 1 each year. Under Plan B, for plan years after the first plan year of the eligible employee's participation in the automatic contribution arrangement, the default contribution percentage is automatically increased beginning with the first pay period that begins on or after April 1. The increase in the default contribution percentage is equal to 1 percentage point. However, under Plan B, the default contribution percentage may never exceed 10 percent.

Eligible employees are provided notices satisfying the timing and content requirements of sections 401(k)(13)(E) and 414(w)(4) that explain the default contribution percentage, automatic increases to the default contribution percentage in plan years after the first plan year, and the eligible employees' right to elect to have no elective contributions (including no default contributions) made to Plan B or to alter the amount of those contributions.

Plan B provides that elective contributions are immediately nonforfeitable and, if the eligible employee has not attained age 59-1/2, cannot be distributed prior to the eligible employee's death or severance from employment, except in the case of hardship or in the case of a distribution that satisfies the requirements of section 414(w)(2). Plan B also provides that, for each eligible employee, Employer Y will make specified matching contributions to Plan B on account of the eligible employee's elective contributions up to a specified percentage of the eligible employee's plan compensation under a matching formula that satisfies the rules of sections 401(k)(13)(D)(i)(I), (ii), (iii), and (iv) and 401(m)(12).

Plan B provides that default contributions and related matching contributions will, absent a contrary election, be invested in a QDIA.

LAW

Automatic Contribution Arrangements under a Qualified Cash or Deferred Arrangement

Section 401(k) provides that a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan can meet the requirements of section 401(a) even if it includes a qualified cash or deferred arrangement. Section 401(k) also sets forth the requirements that a cash or deferred arrangement must satisfy in order to be a qualified cash or deferred arrangement.

Section 1.401(k)-1(a)(2)(i) defines a cash or deferred arrangement as an arrangement under which an employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a).

Section 1.401(k)-1(a)(3)(i) defines a cash or deferred election as any election (or modification of an earlier election) by an employee to have the employer either provide an amount to the employee in the form of cash (or some other taxable benefit) that is not currently available or contribute an amount to a trust (or provide an accrual or other benefit) under a plan deferring the receipt of compensation.

Section 1.401(k)-1(a)(3)(ii) provides that, for purposes of determining whether an election is a cash or deferred election, it is irrelevant whether the default that applies in the absence of an affirmative election is (1) for the employee to receive an amount in cash or some other taxable benefit or (2) for the employer to contribute an amount to a trust or provide an accrual or other benefit under a plan deferring the receipt of compensation.

Section 1.401(k)-1(e)(2)(ii) provides that a qualified cash or deferred arrangement must provide an employee with an effective opportunity to make (or change) a cash or deferred election at least once during each plan year, and that whether an employee has an effective opportunity is determined based on all the relevant facts and circumstances, including the adequacy of notice of the availability of the election, the period of time during which an election may be made, and any other conditions on elections.

Qualified Automatic Contribution Arrangements (Automatic Enrollment Nondiscrimination Safe Harbor)

In general, section 401(k)(3) imposes nondiscrimination standards on qualified cash or deferred arrangements, including an actual deferral percentage (ADP) test. Similarly, in general, section 401(m) imposes nondiscrimination standards on employer matching contributions made to a defined contribution plan on behalf of the employee, including an actual contribution percentage (ACP) test.

Sections 401(k)(13) and 401(m)(12) provide alternative design-based safe harbors for a cash or deferred arrangement that provides for automatic contributions at a specified level and meets certain employer matching contribution (or employer nonelective contribution),

uniformity, notice, and other requirements. A cash or deferred arrangement that satisfies these requirements is a qualified automatic contribution arrangement that is treated as satisfying the ADP test and the ACP test.

Sections 1.401(k)-3 and 1.401(m)-3 prescribe rules for qualified automatic contribution arrangements. These rules include, under section 1.401(k)-3(j)(1)(i), a requirement that the default election under a qualified automatic contribution arrangement be a contribution equal to a qualified percentage multiplied by the employee's eligible compensation from which elective contributions are permitted to be made under the cash or deferred arrangement. Under section 1.401(k)-3(j)(2), in general a default contribution percentage is a qualified percentage only if it is uniform for all eligible employees, does not exceed 10 percent, and satisfies certain minimum percentage requirements. Under section 1.401(k)-3(j)(2)(iii), several exceptions to the uniformity requirement apply, including that a plan does not fail to satisfy the uniformity requirement merely because the default contribution percentage varies based on the number of years (or portions of years) since the beginning of the initial period for an employee. For this purpose, the initial period begins when the employee first has contributions made pursuant to a default election under an arrangement that is intended to be a qualified automatic contribution arrangement for a plan year and ends on the last day of the following plan year. Section 1.401(k)-3(j)(2)(ii) sets out the minimum percentage requirements. In general, the minimum percentage is 3 percent for the initial period. The minimum percentage is 4 percent for the next succeeding plan year, 5 percent for the next succeeding plan year, and 6 percent for all succeeding plan years.

Eligible Automatic Contribution Arrangements (Permitting 90-day Withdrawals)

Section 414(w) provides limited relief from generally-applicable distribution restrictions under sections 401(k)(2)(B), 403(b)(7), 403(b)(11), and 457(d)(1)(A) in the case of an eligible automatic contribution arrangement. In particular, sections 414(w)(1) and 414(w)(2) provide that an applicable employer plan that contains an eligible automatic contribution arrangement is permitted to allow employees, within 90 days after the date of the first default contribution with respect to the employee under the arrangement, to elect to receive a distribution equal to the amount of default contributions (and attributable earnings) made with respect to the employee beginning with the first payroll period to which the eligible automatic contribution arrangement applies to the employee and ending with the effective date of the election. Sections 414(w)(1)(A) and 414(w)(1)(B) provide that the amount of the distribution is includible in gross income for the taxable year in which the distribution is made, but is not subject to the additional income tax under section 72(t). Under section 414(w), an automatic contribution arrangement must satisfy uniformity, notice, and other requirements in order to be an eligible automatic contribution arrangement.

Section 1.414(w)-1 prescribes rules under section 414(w), including, under section 1.414(w)-1(b)(2)(i), that the default contribution election under an eligible automatic contribution arrangement be a uniform percentage of compensation. Under section 1.414(w)-1(b)(2)(ii), several exceptions to the uniformity requirement apply by cross-reference to section 1.401(k)-3(j)(2)(iii), including a modified version of the exception under which a plan does not fail to satisfy the uniformity requirement merely because the default contribution percentage

varies based on the number of years (or portions of years) since the beginning of the initial period for an employee.

ANALYSIS

Situation 1

The default contributions made for an eligible employee in Situation 1 are elective contributions made pursuant to a cash or deferred election and satisfy the requirement in section 1.401(k)-1(a)(3)(i) that the amount that each eligible employee may defer as an elective contribution be available to the eligible employee in cash (or some other taxable benefit). Pursuant to section 1.401(k)-1(a)(3)(ii), the election is a cash or deferred election and the contributions are elective contributions even though the contributions are made pursuant to a default election in the absence of an affirmative election.

Because a default contribution percentage can be increased or otherwise changed over time pursuant to a plan-specified schedule, the default contributions in Situation 1 do not cease to be elective contributions merely because default contribution percentages increase over time and such increases are, in part, determined by reference to the amount of, and are scheduled to take effect at or by reference to the time of, future increases in base pay.

The structure of increases in the default contribution percentage for years after the first plan year of an eligible employee's participation in the automatic contribution arrangement results in default contribution percentages for eligible employees that are not uniform percentages of plan compensation for all eligible employees, and the percentages do not vary based solely on the number of years (or portions of years) since the beginning of the initial period described in section 1.401(k)-3(j)(2)(iii)(A). However, because the automatic contribution arrangement in Situation 1 is not intended to be an eligible automatic contribution arrangement or a qualified automatic contribution arrangement, this nonuniformity is permissible.

Situation 2

The default contributions described in Situation 2 are elective contributions made pursuant to cash or deferred elections and satisfy the requirement in section 1.401(k)-1(a)(3)(i) that the amount that each eligible employee may defer as an elective contribution be available to the eligible employee in cash (or some other taxable benefit). Pursuant to section 1.401(k)-1(a)(3)(ii), the election is a cash or deferred election and the contributions are elective contributions even though the contributions are made pursuant to a default election in the absence of an affirmative election.

The default contributions described in Situation 2 do not cause the arrangement to fail to satisfy the requirements for a qualified automatic contribution arrangement and an eligible automatic contribution arrangement. In particular, the provisions in Plan B under which, for plan years after the first plan year of an eligible employee's participation in the automatic contribution arrangement, the default contribution percentage is automatically increased beginning with the

first pay period that begins on or after April 1, do not cause Plan B to fail the uniformity requirement of sections 1.401(k)-3(j)(2)(i) and 1.414(w)-1(b)(2)(i). The increases are eligible for an exception to the uniformity requirement because they apply in the same manner to all eligible employees for whom the same number of years or portions of years have elapsed since default contributions were first made for them under the automatic contribution arrangement.

Also, the default contribution percentages for each plan year after the first plan year satisfy the minimum default contribution percentage requirements of section 1.401(k)-3(j)(2)(ii) for periods beginning both before and on or after April 1 of such a plan year. This is because, under section 1.401(k)-3(j)(2)(ii)(B), the minimum default contribution percentage of 4 percent is not required to apply until after the end of the plan year following the first plan year of an eligible employee's participation in the automatic contribution arrangement, whereas, under Plan B, the increased default contribution percentage of 4 percent applies earlier, beginning with the first pay period that begins on or after April 1 of the plan year following the first plan year. Similarly, the minimum default contribution percentages of 5 percent and 6 percent set out in section 1.401(k)-3(j)(2)(ii)(C) and (D) are satisfied under Plan B earlier than required. Alternatively, if under Plan B increased default contribution percentages had not begun to apply until April 1 of the second plan year following the first plan year, the minimum default contribution percentage requirements could have been satisfied by using an initial default contribution percentage of 4 percent (rather than 3 percent).

HOLDINGS

1. Default contributions to a profit-sharing plan will not fail to be considered elective contributions merely because they are made pursuant to an automatic contribution arrangement under which an eligible employee's default contribution percentage automatically increases in plan years after the first plan year of the eligible employee's participation in the automatic contribution arrangement based in part on increases in the eligible employee's plan compensation.

2. Default contributions under an automatic contribution arrangement will not fail to satisfy the qualified percentage requirement (including uniformity and minimum percentage requirements) relating to a qualified automatic contribution arrangement or the uniformity requirement relating to an eligible automatic contribution arrangement merely because default contributions are made pursuant to an arrangement under which the default contribution percentage for all eligible employees increases on a date other than the first day of a plan year.

DRAFTING INFORMATION

The principal author of this revenue ruling is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this revenue ruling may be sent via e-mail to RetirementPlanQuestions@irs.gov.

Part I

Section 401. - Qualified Pension, Profit-sharing, and Stock Bonus Plans

Annual Paid Time Off Contributions

Rev. Rul. 2009-31

ISSUES

(1) Do the amendments described below to an existing qualified profit-sharing plan requiring or permitting certain annual contributions of the dollar equivalent of unused paid time off cause the plan to fail to meet the requirements of § 401(a) and, if applicable, § 401(k) of the Internal Revenue Code (Code)?

(2) When is a participant required to recognize gross income with respect to the contributions to the qualified profit-sharing plan and payments to the participant as described below?

FACTS

For purposes of each situation below, it is assumed that the employer is a corporation to which subchapter C of Chapter 1, Subtitle A, of the Code applies; that each participant is an individual who accounts for gross income under the cash receipts and disbursements method of accounting and has a calendar year taxable year; that all employees of the employer are eligible to participate in the paid time off plan (the PTO Plan) on substantially the same terms and conditions; that prior to its amendment, the PTO Plan qualifies as a bona fide sick and vacation leave plan for purposes of § 409A and § 1.409A-1(a)(5) of the Income Tax Regulations; that all payments for paid time off (whether paid for used or unused time off) are made from the general assets of the employer; and that the employer has two-week pay periods. For this purpose, a paid time off plan refers to a sick and vacation leave plan under which a participant may take paid leave without regard to whether the leave is due to illness or incapacity.

Situation 1

Company Z maintains the Company Z PTO Plan (Z PTO Plan), under which all participants are granted up to 240 hours of paid time off each January 1 (prorated for new hires commencing employment during the calendar year), with the number of hours depending solely on the participant's number of years of service. For this purpose, salaried employees are treated as working 8 hours per work day. Under the Z PTO Plan, no unused paid time off hours remaining as of the close of business on December 31 may be carried over to the following year.

Company Z also maintains the Company Z Profit Sharing Plan (Z Profit Sharing Plan), which is a profit-sharing plan that, without regard to the amendment described in

this Situation 1, meets the requirements of § 401(a). The Z Profit Sharing Plan includes a qualified cash or deferred arrangement under § 401(k) that provides for elective contributions and that does not provide for catch-up contributions under § 414(v). The Z Profit Sharing Plan has a calendar year plan year and limitation year.

In December 2008, Company Z amended the Z Profit Sharing Plan and the Z PTO Plan, effective January 1, 2009, to provide that (1) the dollar equivalent of any unused paid time off as of the close of business on December 31 is forfeited under the Z PTO Plan and the dollar equivalent of the amount forfeited is contributed to the Z Profit Sharing Plan and allocated to the participant's account as of December 31, to the extent the contribution (in combination with prior annual additions) does not exceed the applicable limitations under § 415(c), and (2) the dollar equivalent of any remaining paid time off is paid to the employee by February 28 of the following year. Under the Z Profit Sharing Plan, the amounts attributable to paid time off are in addition to other contributions under the plan and are treated as nonelective contributions. For these purposes, the dollar equivalent of the unused paid time off is determined as the number of hours of unused paid time off multiplied by the participant's hourly rate of compensation as of December 31 of that year (determined for salaried employees by treating the employee as working 8 hours per work day).

A is an employee of Company Z who participates in the Z PTO Plan and the Z Profit Sharing Plan. As of the close of business on December 31, 2009, A has 20x hours of unused paid time off and earns $25 per hour, and therefore the dollar equivalent of A's unused paid time off is $500x. Because of the application of the limitations under § 415(c), Company Z may contribute only $400x of unused paid time off to the Z Profit Sharing Plan for allocation to A's account in the 2009 limitation year (in combination with prior annual additions).

Company Z contributes $400x to the Z Profit Sharing Plan on behalf of A on February 28, 2010, and allocates this amount to A's account under the Z Profit Sharing Plan as of December 31, 2009. Company Z pays A the remaining $100x in cash on February 28, 2010.

Situation 2

Company Y maintains the Company Y PTO Plan (Y PTO Plan), under which participants ratably accrue up to 240 hours of paid time off each calendar year on a pay-period basis beginning on January 1 and at the end of the year may carry over to the following year an amount of unused paid time off not to exceed a specified number of hours (the carryover limit). For this purpose, salaried employees are treated as working 8 hours per work day. The dollar equivalent of any unused paid time off for a year in excess of the carryover limit is paid to the participant by February 28 of the following year.

Company Y also maintains the Company Y Section 401(k) Plan (Y 401(k) Plan), which is a profit-sharing plan that, without regard to the amendment described in this

Situation 2, meets the requirements of § 401(a). The Y 401(k) Plan includes a qualified cash or deferred arrangement under § 401(k) that provides for elective contributions and that does not provide for catch-up contributions under § 414(v). The Y 401(k) Plan has a calendar year plan year and limitation year.

In December 2008, Company Y amended the Y 401(k) Plan and the Y PTO Plan, effective January 1, 2009, to provide that a participant may elect to reduce all or part of the dollar equivalent of any unused paid time off that may not be carried over to the following year and have that amount contributed by Company Y to the Y 401(k) Plan and allocated to the participant's account as of the beginning of the third pay period of the following year, to the extent that the contribution (in combination with prior annual additions) does not exceed the applicable limitations under § 415(c) and to the extent that the contributions (in combination with prior elective deferrals) do not exceed the applicable limitation under § 401(a)(30). Under the terms of the Y 401(k) Plan, contributions of the dollar equivalent of paid time off are in addition to other contributions under the Y 401(k) Plan and are treated as elective contributions (for example, the same distribution restrictions apply). The dollar equivalent of any unused paid time off that is not contributed to the Y 401(k) Plan under the terms of the amended Y PTO Plan is paid to the participant by February 28 of the following year. For these purposes, the dollar equivalent of the unused paid time off is determined as the number of hours of unused paid time off multiplied by the participant's hourly rate of compensation as of December 31 of the initial year (determined for salaried employees by treating the employee as working 8 hours per work day).

B is an employee of Company Y who participates in the Y PTO Plan and the Y 401(k) Plan. As of the close of business on December 31, 2009, B has 15x hours of unused paid time off in excess of the carryover limit and earns $30 per hour, so the dollar equivalent of B's unused paid time off in excess of the carryover limit is $450x.

Pursuant to a valid and timely election, B elects to have 60% of the dollar equivalent of the unused paid time off in excess of the carryover limit, or $270x, contributed to the Y 401(k) Plan, the contribution of which would not cause the plan to exceed the limitations under §§ 401(a)(30) and 415(c) for the applicable year. On February 1, 2010, Company Y contributes $270x to the Y 401(k) Plan and allocates $270x to B's account under the plan as of February 1, 2010. Under the terms of the Y 401(k) Plan, this amount is treated as a contribution for the 2010 plan year. Company Y pays B the remaining $180x on February 1, 2010.

LAW

Section 401(a) provides that a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of its employees or their beneficiaries constitutes a qualified trust under that section if a series of conditions is met. Section 401(a)(4) provides as one of those conditions that the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of § 414(q)).

A plan maintained pursuant to a collective bargaining agreement is deemed to satisfy the nondiscrimination requirements. In other cases, under the regulations under § 401(a)(4), the amount of nonelective contributions under a profit-sharing plan must satisfy either a design-based safe harbor or a test based on the contributions made for individual participants.

Section 401(a)(30) of the Code provides that in the case of a trust which is part of a plan under which elective deferrals (within the meaning of § 402(g)(3)) may be made with respect to any individual during a calendar year, such trust does not constitute a qualified trust unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under § 402(g)(1)(A) for taxable years beginning in such calendar year. Under § 402(g)(3), elective contributions under a qualified cash or deferred arrangement are included in the definition of elective deferrals.

Section 401(k)(2)(A) provides, in pertinent part, that a qualified cash or deferred arrangement is any arrangement which is part of a profit sharing plan or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan, which meets the requirements of § 401(a), and under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash.

Section 1.401(k)-1(a)(3)(i) provides that a cash or deferred election is any election by an employee to have the employer either: (A) provide an amount to the employee in the form of cash or some other taxable benefit that is not currently available or (B) contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation.

Section 1.401(k)-6 defines nonelective contributions as employer contributions (other than matching contributions) with respect to which the employee may not elect to have the contributions paid to the employee in cash or other benefits instead of being contributed to the plan. Section 1.401(k)-6 defines elective contributions as contributions made pursuant to a cash or deferred election under a cash or deferred arrangement (whether or not qualified).

Under § 401(k)(3)(A)(ii), elective contributions under a qualified cash or deferred arrangement generally must satisfy the actual deferral percentage test. Section 1.401(k)-2(a)(4)(i) provides generally that for purposes of the actual deferral percentage test, elective contributions are taken into account for a year if the elective contribution is allocated to the participant's account under the plan as of a date within that year, and certain other requirements are satisfied.

Section 402(a) provides that any amount actually distributed to any distributee by an employees' trust described in § 401(a) which is exempt from tax under § 501(a) is taxable to the distributee in the taxable year of the distributee in which distributed, under

§ 72. Section 72(t) provides, in pertinent part, that the income tax applicable to any amount a participant receives from a qualified plan generally is increased by an amount equal to 10 percent of the portion of the amount includible in gross income unless the amounts are distributed on or after the date on which the participant attains age 59 ½ or after the participant's separation from service after attainment of age 55.

Section 402(e)(3) provides, in pertinent part, that contributions made by an employer on behalf of an employee to a trust which is part of a qualified cash or deferred arrangement (as defined in § 401(k)(2)) are not treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

Section 415(a)(1)(B) provides that a trust which is part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under § 401(a) if in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of § 415(c). Section 415(c)(1) provides that contributions and other additions with respect to a participant exceed the limitation of § 415(c) if, when expressed as an annual addition to the participant's account, the annual addition is greater than the lesser of $40,000 or 100 percent of the participant's compensation. Section 415(d)(1)(C) provides that the Secretary shall adjust annually the $40,000 amount for increases in the cost-of-living.

Section 1.415(c)-1(b)(1)(i) generally defines the term "annual addition" as the sum, credited to a participant's account for any limitation year, of (A) employer contributions; (B) employee contributions; and (C) forfeitures. Under § 1.415(c)-1(b)(6), an annual addition generally is treated as credited to the account of a participant for a particular limitation year if it is allocated to the participant's account under the terms of the plan as of any date within that limitation year.

Section 415(c)(3)(A) provides that, in general, the term "participant's compensation" means the compensation of the participant from the employer for the year. Section 1.415(c)-2(b)(1) provides that, for purposes of § 415, compensation includes amounts received for personal services actually rendered in the course of employment with the employer maintaining the plan, to the extent that the amounts are includible in gross income (or to the extent the amounts would have been received and includible in gross income but for certain elections, including an election described in § 402(e)(3)). However, under § 1.415(c)-2(b)(2), contributions by an employer to a plan of deferred compensation (other than certain elective contributions described in § 402(e)(3)) are not included in compensation for purposes of § 415.

Section 1.415(c)-2(e)(1)(i) states in pertinent part that, in order to be taken into account for a limitation year, compensation within the meaning of section 415(c)(3) must be actually paid or made available to an employee (or, if earlier, includible in the gross income of the employee) within the limitation year. Section 1.415(c)-2(e)(1)(ii) states in

pertinent part that, except as otherwise provided in § 1.415(c)-2(e), in order to be taken into account for a limitation year, compensation within the meaning of section 415(c)(3) must be paid or treated as paid to the employee (in accordance with the rules of § 1.415-2(e)(1)(i)) prior to the employee's severance from employment with the employer maintaining the plan.

Section 451(a) and § 1.451-1(a) provide that an item of gross income is includible in gross income in the taxable year in which it is actually or constructively received by a taxpayer using the cash receipts and disbursements method of accounting. Under § 1.451-2(a), income is constructively received in the taxable year during which it is credited to a taxpayer's account, set apart or otherwise made available so that the taxpayer may draw on it at any time. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

Section 409A(a)(1)(A)(i) provides, in pertinent part, that if at any time during a taxable year a nonqualified deferred compensation plan fails to meet certain requirements set forth under § 409A(a), or is not operated in accordance with such requirements, all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income. Section 409A(a)(1)(B) provides, in pertinent part, that any compensation required to be included in gross income under § 409A(a)(1)(A) for a taxable year shall be subject to the additional taxes set forth in § 409A(a)(1)(B).

Section 409A(d)(1) provides that the term "nonqualified deferred compensation plan" means any plan that provides for the deferral of compensation, other than: (A) a qualified employer plan and (B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan. Section 409A(d)(2) provides, in pertinent part, that the term "qualified employer plan" means any plan, contract, pension, account or trust described in § 219(g)(5)(A) or (B) (without regard to § 219(g)(5)(A)(iii)). Section 219(g)(5)(A)(i) refers to a plan described in § 401(a), which includes a trust exempt from tax under § 501(a).

ANALYSIS

Situation 1

The amendment of the Z Profit Sharing Plan to require certain contributions of the dollar equivalent of unused paid time off to the Z Profit Sharing Plan does not cause the Z Profit Sharing Plan to fail to meet the requirements of § 401(a), provided that the contributions made pursuant to the arrangement satisfy the nondiscrimination requirements of § 401(a)(4) (in combination with other contributions and forfeitures allocated for the year). Because A is not provided a right to elect a payment of the dollar equivalent of the unused paid time off in lieu of a plan contribution, Company Z's contribution of $400x to the Z Profit Sharing Plan is not an elective contribution that is

made pursuant to a cash or deferred election within the meaning of § 401(k)(2)(A) and § 1.401(k)-(1)(a)(3)(i). Rather, Company Z's contribution to the Z Profit Sharing Plan is a nonelective employer contribution within the meaning of § 1.401(k)-6.

The amount contributed and allocated for each participant will vary based on the amount of the participant's unused paid time off. Thus, contributions for unused paid time off are likely to preclude a plan from satisfying a design-based safe harbor under § 401(a)(4). Therefore, testing based on the contributions made for individual participants generally will be required.

The contributions made pursuant to the arrangement must also not exceed the limitations under § 415(c) (in combination with prior annual additions). Because the contribution of $400x on behalf of A was allocated to A's account as of December 31, 2009, and made February 28, 2010 (before the end of the 30 day period following the deadline for Company Z to file its income tax return), it is subject to the limitations under § 415(c) applicable for the 2009 limitation year and is taken into account for § 401(a)(4) purposes for the 2009 plan year. Under the facts presented, the contribution of $400x does not cause the plan to exceed the limitations under § 415(c).

If the requirements of § 401(a)(4) are met, the amount contributed will be includible in A's gross income in accordance with § 402(a) only when distributed to A. Like any other distribution from the Z Profit Sharing Plan, the distribution of amounts attributable to the dollar equivalent of the unused paid time off is subject to an additional 10% income tax under § 72(t) unless the distribution satisfies one of the exceptions described in § 72(t)(2), such as being made on or after the date on which the participant attains age 59½ or after the participant separates from service after attainment of age 55.

Under the Z PTO Plan as amended, the dollar equivalent of unused paid time off is not paid, set apart, or otherwise made available so that A may draw on it either (i) during the 2009 calendar year or (ii) upon conversion in 2009 to a contribution to a qualified plan or cash payment in 2010. Therefore, under the doctrine of constructive receipt and § 451, such amount is not includible in A's gross income in 2009. In addition, the amendment to the Z PTO Plan and the operation of the plan in accordance with the terms of the amendment do not cause the Z PTO Plan to fail to qualify as a bona fide sick and vacation leave plan for purposes of § 409A and § 1.409A-1(a)(5). The $100x payment is includible in A's gross income in 2010, the taxable year in which it is paid to A.

Situation 2

The amendment of the Y 401(k) Plan to permit certain contributions of the dollar equivalent of unused paid time off to the Y 401(k) Plan does not cause the Y 401(k) Plan to fail to meet the requirements of §§ 401(a) and 401(k), provided that the contributions (taking into account other contributions, prior deferrals, and prior annual additions, as applicable) satisfy the nondiscrimination requirements of § 401(k) and the applicable limitations of §§ 401(a)(30) and 415(c).

Because B is provided a right to elect either a payment of cash or a plan contribution for the dollar equivalent of unused paid time off that may not be carried over to the subsequent year, Company Y's contribution of $270x to the Y 401(k) Plan and allocation to B's account under the plan is an elective contribution. Because the contribution is made on February 1, 2010 and is not treated as allocated for 2009, it is taken into consideration for the nondiscrimination requirements of § 401(k) and the limitations of §§ 401(a)(30) and 415(c) for 2010.

Under the facts presented, the allocation of $270x would not cause the Y 401(k) Plan to exceed the limitations of § 415(c) for the 2010 limitation year. Although the dollar equivalent of the unused paid time off was made available to D in 2010, pursuant to § 402(e)(3), the $270x is not treated as made available to D if the amount was contributed to the plan as part of a qualified cash or deferred arrangement. If the requirements of §§ 401(k) and 401(a)(30) are met, the contribution will have been made pursuant to a qualified cash or deferred arrangement under § 401(k) and will be includible in B's gross income in accordance with § 402(a) only when distributed to B. Like any other distribution from the Y 401(k) Plan, the distribution of amounts attributable to the dollar equivalent of the unused paid time off is subject to an additional 10% income tax under § 72(t) unless the distribution satisfies one of the exceptions described in § 72(t)(2), such as being made on or after the date on which the participant attains age 59½ or after the participant separates from service after attainment of age 55.

Under the Y PTO Plan, as amended, the dollar equivalent of unused paid time off is not paid, set apart, or otherwise made available so that B may draw on it either (i) during the 2009 calendar year or (ii) upon conversion in 2009 to a contribution to a qualified plan or cash payment in 2010. Therefore, under the doctrine of constructive receipt and § 451, such amount is not includible in B's gross income in 2009. In addition, the amendment to the Y PTO Plan and the operation of the plan in accordance with the terms of the amendment do not cause the Y PTO Plan to fail to qualify as a bona fide sick and vacation leave plan for purposes of § 409A and § 1.409A-1(a)(5). The $180x payment is includible in B's gross income in 2010, the taxable year in which it is paid to B.

HOLDING

(1) Under the facts presented, the amendments requiring or permitting certain contributions of the dollar equivalent of unused paid time off to a qualified profit-sharing plan do not cause the plan to fail to meet the qualification requirements of § 401(a), provided that the contributions satisfy the applicable requirements of §§ 401(a)(4) and 415(c) and, where applicable, §§ 401(k) and 401(a)(30).

(2) Under the facts presented, assuming the applicable qualification requirements are satisfied, a participant does not include in gross income contributions of the dollar equivalent of unused paid time off to the profit-sharing plan in accordance

with § 402(a) until distributions are made to the participant from the plan and does not include in gross income an amount paid for the dollar equivalent of unused paid time off that is not contributed to the profit-sharing plan until the taxable year in which the amount is paid to the participant.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Robert Gertner, Roger Kuehnle, and Alice Lynch of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this revenue ruling may be sent via e-mail to retirementplanquestions@irs.gov.

Part I

Section 401. – Qualified Pension, Profit-sharing, and Stock Bonus Plans

Paid Time Off Contributions at Termination of Employment

Rev. Rul. 2009-32

ISSUES

(3) Do the amendments described below to an existing qualified profit-sharing plan requiring or permitting certain contributions to the plan of the dollar equivalent of unused paid time off at a participant's termination of employment cause the plan to fail to meet the requirements of § 401(a) and, if applicable, § 401(k) of the Internal Revenue Code (Code)?

(4) When is a participant required to recognize gross income with respect to the contributions to the qualified profit-sharing plan and payments to the participant as described below?

FACTS

For purposes of each situation below, it is assumed that the employer is a corporation to which subchapter C of Chapter 1, Subtitle A of the Code applies; that each participant is an individual who accounts for gross income under the cash receipts and disbursements method of accounting and has a calendar year taxable year; that all employees of the employer are eligible to participate in the paid time off plan (the PTO plan) on substantially the same terms and conditions; that prior to its amendment, the PTO plan qualifies as a bona fide sick and vacation leave plan for purposes of § 409A and § 1.409A-1(a)(5) of the Income Tax Regulations; that payments under the PTO plan for unused paid time off constitute payment for unused accrued bona fide sick, vacation, or other leave for purposes of § 1.415(c)-2(e)(3)(iii)(A); that all payments for paid time off (whether paid for used or unused time off) are made from the general assets of the employer; and that the employer has two-week pay periods. For this purpose, a paid time off plan refers to a sick and vacation pay or leave plan under which a participant may take paid leave without regard to whether the leave is due to illness or incapacity.

Situation 1

Company X maintains the Company X PTO Plan (X PTO Plan), under which all participants are granted up to 240 hours of paid time off each January 1 (prorated for new hires commencing employment during the calendar year), with the number of hours depending solely on the participant's number of years of service. For this purpose, salaried employees are treated as working 8 hours per work day. Under the X PTO Plan, a participant at the end of the year may carry over to the following year an amount of unused paid time off not to exceed a specified number of hours (the carryover limit),

and any hours of unused paid time off in excess of the carryover limit are forfeited. If a participant terminates employment, the dollar equivalent of any hours of unused paid time off remaining at the termination of employment are paid to the terminated participant within 60 days after the termination of employment, with the dollar equivalent determined as the number of hours of unused paid time off multiplied by the terminated participant's hourly rate of compensation for the pay period during which the participant terminates employment (determined for salaried employees by treating the employee as working 8 hours per work day).

Company X also maintains the Company X Profit Sharing Plan (X Profit Sharing Plan), which is a profit-sharing plan that, without regard to the amendment described in this Situation 1, meets the requirements of § 401(a). The X Profit Sharing Plan includes a qualified cash or deferred arrangement under § 401(k) that provides for elective contributions and that does not provide for catch-up contributions under § 414(v). The X Profit Sharing Plan has a calendar year plan year and limitation year. The X Profit Sharing Plan provides that amounts for unused paid time off paid by the later of 2½ months after termination of employment with Company X or the end of the limitation year that includes the date of the severance from employment are treated as compensation under the plan for purposes of § 415, to the extent permissible under § 415. The X Profit Sharing Plan provides that § 415 compensation is determined using only amounts actually paid during the limitation year.

In December 2008, Company X amended the X Profit Sharing Plan and the X PTO Plan, effective January 1, 2009, to provide that the dollar equivalent of any unused paid time off at the time of a participant's termination of employment is forfeited under the X PTO Plan and is contributed to the X Profit Sharing Plan and allocated to the participant's account as of the first day of the second pay period beginning immediately after the participant's termination of employment, to the extent the contribution (in combination with prior annual additions) does not exceed the applicable limitations under § 415(c). Under the X Profit Sharing Plan, contributions of the dollar equivalent of paid time off are in addition to other contributions under the plan and are treated as nonelective contributions. Under the terms of the X PTO Plan, the dollar equivalent of any unused paid time off that is not contributed to the X Profit Sharing Plan is paid to the terminated participant within 60 days after the termination of employment. For these purposes, the dollar equivalent of the unused paid time off is determined as the number of hours of unused paid time off multiplied by the terminated participant's hourly rate of compensation for the pay period during which the participant terminates employment (determined for salaried employees by treating the employee as working 8 hours per work day).

C is an employee of Company X who participates in the X PTO Plan and the X Profit Sharing Plan. C's employment terminates on October 1, 2009. As of the close of business on October 1, 2009, C has 12x hours of unused paid time off, and earns $25 per hour, and so has unused paid time off with a dollar equivalent of $300x. 12x hours does not exceed the sum of the hours in the remaining work days for 2009 plus the carryover limit.

A contribution of $300x to the X Profit Sharing Plan on behalf of C, in combination with prior annual additions, would not cause C's total contributions and annual additions to exceed the limitations under § 415(c) for the 2009 limitation year. Company X contributes $300x to the X Profit Sharing Plan on October 19, 2009, and allocates this amount to C's account under the X Profit Sharing Plan, effective as of October 19, 2009.

Situation 2

The facts are the same as in Situation 1, except that C's employment terminates on December 28, 2009, and any payment for unused paid time off on account of termination will be paid to C in 2010 and will be the only payment of compensation that C will receive from Company X in 2010. C has 12x hours of unused paid time off and earns $25 per hour, and therefore, has unused paid time off with a dollar equivalent of $300x. The 12x hours of unused paid time off does not exceed the sum of the hours in the remaining work days for 2009 plus the carryover limit. The $300x does not exceed the § 415(c) applicable dollar limit for 2010. Company X contributes $150x to the X Profit Sharing Plan on January 18, 2010, and allocates the amount to C's account under the X Profit Sharing Plan as of January 18, 2010. This contribution is not treated as a contribution to the X Profit Sharing Plan for 2009. Company X pays the remaining $150x to C on January 18, 2010.

Situation 3

Company W maintains the Company W PTO Plan (W PTO Plan), under which participants ratably accrue up to 240 hours of paid time off each calendar year on a pay-period basis beginning on January 1. For this purpose, salaried employees are treated as working 8 hours per work day. Under the W PTO Plan, a specified number of unused paid time off hours remaining as of the close of business on December 31 may be carried over to the following year, and any hours of unused paid time off in excess of the carryover limit are forfeited. If a participant terminates employment, the dollar equivalent of any hours of unused paid time off remaining at the termination of employment are paid to the terminated participant within 60 days after the termination of employment, with the dollar equivalent determined as the number of hours of unused paid time off multiplied by the terminated participant's hourly rate of compensation for the pay period during which the participant terminates employment (determined for salaried employees by treating the employee as working 8 hours per work day).

Company W also maintains the Company W Section 401(k) Plan (W 401(k) Plan), which is a profit-sharing plan that, without regard to the amendment described in this Situation 3, meets the requirements of § 401(a). The W 401(k) Plan includes a qualified cash or deferred arrangement under § 401(k) that does not provide for catch-up contributions under § 414(v). The W 401(k) Plan has a calendar year plan year and limitation year. The W 401(k) Plan provides that for purposes of §§ 401(k) and 415(c), amounts contributed to the plan are taken into account for the year in which falls the

date the amounts are allocated to the participant's account under the plan. The W 401(k) Plan also provides that amounts for unused paid time off paid by the later of 2½ months after termination of employment with Company W or the end of the limitation year that includes the date of the severance from employment, are treated as compensation under the plan for purposes of § 415, to the extent permissible under § 415(c). The W 401(k) Plan provides that, for purposes of § 415, compensation is determined by including only amounts actually paid during the limitation year.

In December 2008, Company W amended the W 401(k) Plan and the W PTO Plan, effective January 1, 2009, to provide that a participant may elect to reduce all or part of the dollar equivalent of any unused paid time off at the time of a participant's termination of employment and have that amount contributed by Company W and allocated to the participant's account under the W 401(k) Plan as of the first day of the second pay period beginning immediately after the participant's termination of employment, to the extent that the contribution (in combination with prior annual additions) does not exceed the applicable limitations under § 415(c) and to the extent the contributions (in combination with prior elective deferrals) do not exceed the applicable limitation under § 401(a)(30). Under the terms of the W 401(k) Plan, contributions of the dollar equivalent of paid time off are in addition to other contributions and treated as elective contributions. Under the terms of the W PTO Plan, the dollar equivalent of any unused paid time off that is not contributed to the W 401(k) Plan is paid to the employee on the first day of the second pay period beginning immediately after the participant's termination of employment. For these purposes, the dollar equivalent of the unused paid time off is determined as the number of hours of unused paid time off multiplied by the terminated participant's hourly rate of compensation for the pay period during which the participant terminates employment (determined for salaried employees by treating the employee as working 8 hours per work day).

D is an employee of Company W who participates in the W PTO Plan and the W 401(k) Plan. D terminates employment on October 1, 2009. As of the close of business on October 1, 2009, D has 15x hours of unused paid time off, and earns $20 per hour, and so has unused paid time off with a dollar equivalent of $300x. 15x hours does not exceed the sum of the hours in the remaining work days for 2009 plus the carryover limit.

D has a valid and timely election in effect to have 70% of the dollar equivalent of the unused paid time off contributed to the W 401(k) Plan. The contribution of $210x (70% of $300x) would not exceed the applicable limitations under §§ 401(a)(30) and 415(c). Company W contributes $210x to the W 401(k) Plan on October 19, 2009, and allocates that amount to D's account under the W 401(k) Plan as of October 19, 2009. Company W pays the remaining $90x to D on October 19, 2009.

Situation 4

The facts are the same as in Situation 3, except that D's employment terminates on December 28, 2009, and any payment for unused paid time off on account of termination will be paid to D in 2010 and will be the only payment of compensation that D will receive from Company W in 2010. As of the close of business on December 28, 2009, D has 15x hours of unused paid time off, and earns $20 per hour, and so has unused paid time off with a dollar equivalent of $300x. 15x hours does not exceed the sum of the hours in the remaining work days for 2009 plus the carryover limit.

D has a valid and timely election in effect to have 70% of the dollar equivalent of the unused paid time off contributed to the W 401(k) Plan. The contribution of $210x (70% of $300x) would not exceed the applicable limitations under §§ 401(a)(30) and 415(c). Company W contributes $210x to the W 401(k) Plan on January 18, 2010 and allocates that amount to D's account under the W 401(k) Plan as of January 18, 2010. Company W pays the remaining $90x to D on January 18, 2010.

LAW

Section 401(a) provides that a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of its employees or their beneficiaries constitutes a qualified trust under that section if a series of conditions is met. Section 401(a)(4) provides as one of those conditions that the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of § 414(q)). A plan maintained pursuant to a collective bargaining agreement is deemed to satisfy the nondiscrimination requirements. In other cases, under the regulations under § 401(a)(4), the amount of nonelective contributions under a profit-sharing plan must satisfy either a design-based safe harbor or a test based on the contributions made for individual participants.

Section 401(a)(30) of the Code provides that in the case of a trust which is part of a plan under which elective deferrals (within the meaning of § 402(g)(3)) may be made with respect to any individual during a calendar year, such trust does not constitute a qualified trust unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under § 402(g)(1)(A) for taxable years beginning in such calendar year. Under § 402(g)(3), elective contributions under a qualified cash or deferred arrangement are included in the definition of elective deferrals.

Section 401(k)(2)(A) provides, in pertinent part, that a qualified cash or deferred arrangement is any arrangement which is part of a profit sharing plan or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan, which meets the requirements of § 401(a), and under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash.

Section 1.401(k)-1(a)(3)(i) provides that a cash or deferred election is any election by an employee to have the employer either: (A) provide an amount to the employee in the form of cash or some other taxable benefit that is not currently available or (B) contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation.

Section 1.401(k)-6 defines nonelective contributions as employer contributions (other than matching contributions) with respect to which the employee may not elect to have the contributions paid to the employee in cash or other benefits instead of being contributed to the plan. Section 1.401(k)-6 defines elective contributions as contributions made pursuant to a cash or deferred election under a cash or deferred arrangement (whether or not qualified).

Under § 401(k)(3)(A)(ii), elective contributions under a qualified cash or deferred arrangement generally must satisfy the actual deferral percentage test. Section 1.401(k)-2(a)(4)(i) provides generally that for purposes of the actual deferral percentage test, elective contributions are taken into account for a year if the elective contribution is allocated to the participant's account under the plan as of a date within that year, and certain other requirements are satisfied.

Section 402(a) provides that any amount actually distributed to any distributee by an employees' trust described in § 401(a) which is exempt from tax under § 501(a) is taxable to the distributee in the taxable year of the distributee in which distributed, under § 72. Section 72(t) provides, in pertinent part, that the income tax applicable to any amount a participant receives from a qualified plan generally is increased by an amount equal to 10 percent of the portion of the amount includible in gross income unless such amounts are distributed on or after the date on which the participant attains age 59½ or after the participant's separation from service after attainment of age 55.

Section 402(e)(3) provides, in pertinent part, that contributions made by an employer on behalf of an employee to a trust which is part of a qualified cash or deferred arrangement (as defined in § 401(k)(2)) are not treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

Section 415(a)(1)(B) provides that a trust which is part of a pension, profit-sharing, or stock bonus plan does not constitute a qualified trust under § 401(a) if in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of § 415(c). Section 415(c)(1) provides that contributions and other additions with respect to a participant exceed the limitation of § 415 if, when expressed as an annual addition to the participant's account, the annual addition is greater than the lesser of $40,000 or 100 percent of the participant's compensation. Section 415(d)(1)(C) provides that the

Secretary shall adjust annually the $40,000 amount for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

Section 1.415(c)-1(b)(1)(i) generally defines the term "annual addition" as the sum, credited to a participant's account for any limitation year, of (A) employer contributions; (B) employee contributions; and (C) forfeitures. Under § 1.415(c)-1(b)(6), an annual addition generally is treated as credited to the account of a participant for a particular limitation year if it is allocated to the participant's account under the terms of the plan as of any date within that limitation year.

Section 415(c)(3)(A) provides that in general, the term "participant's compensation" means the compensation of the participant from the employer for the year. Section 1.415(c)-2(b)(1) provides that, for purposes of § 415, compensation includes amounts received for personal services actually rendered in the course of employment with the employer maintaining the plan, to the extent that the amounts are includible in gross income (or to the extent the amounts would have been received and includible in gross income but for certain elections, including an election described in § 402(e)(3)). However, under § 1.415(c)-2(b)(2), contributions by an employer to a plan of deferred compensation (other than certain elective contributions, including contributions described in § 402(e)(3)) are not included in compensation for purposes of § 415.

Section 1.415(c)-2(e)(1)(i) states in pertinent part that, in order to be taken into account for a limitation year, compensation within the meaning of section 415(c)(3) must be actually paid or made available to an employee (or, if earlier, includible in the gross income of the employee) within the limitation year. Section 1.415(c)-2(e)(1)(ii) states in pertinent part that, except as otherwise provided in § 1.415(c)-2(e), in order to be taken into account for a limitation year, compensation within the meaning of section 415(c)(3) must be paid or treated as paid to the employee (in accordance with the rules of § 1.415(c)-2(e)(1)(i)) prior to the employee's severance from employment with the employer maintaining the plan.

Section 1.415(c)-2(e)(3) provides that a plan may provide that certain amounts are included in the participant's compensation (within the meaning of § 415(c)(3)) if those amounts are paid by the later of 2½ months after severance from employment with the employer maintaining the plan or the end of the limitation year that includes the date of severance from employment with the employer maintaining the plan, and those amounts would have been included in the definition of compensation had they been paid prior to the employee's severance from employment with the employer maintaining the plan. Section 1.415(c)-2(e)(3)(iii)(A) provides that an amount is described in § 1.415(c)-2(e)(3)(iii) (and therefore may be included in § 415(c) compensation subject to certain conditions) if the amount is payment for unused accrued bona fide sick, vacation, or other leave, but only if the employee would have been able to use the leave if employment had continued.

Section 451(a) and §1.451-1(a) provide that an item of gross income is includible in gross income in the taxable year in which it is actually or constructively received by a taxpayer using the cash receipts and disbursements method of accounting. Under §1.451-2(a), income is constructively received in the taxable year during which it is credited to a taxpayer's account, set apart or otherwise made available so that the taxpayer may draw on it at any time. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

Section 409A(a)(1)(A)(i) provides, in pertinent part, that if at any time during a taxable year a nonqualified deferred compensation plan fails to meet certain requirements set forth under § 409A(a), or is not operated in accordance with such requirements, all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income. Section 409A(a)(1)(B) provides, in pertinent part, that any compensation required to be included in gross income under § 409A(a)(1)(A) for a taxable year shall be subject to the additional taxes set forth in § 409A(a)(1)(B).

Section 409A(d)(1) provides that the term "nonqualified deferred compensation plan" means any plan that provides for the deferral of compensation, other than: (A) a qualified employer plan and (B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan. Section 409A(d)(2) provides, in pertinent part, that the term "qualified employer plan" means any plan, contract, pension, account or trust described in § 219(g)(5)(A) or (B) (without regard to § 219(g)(5)(A)(iii)). Section 219(g)(5)(A)(i) refers to a plan described in § 401(a), which includes a trust exempt from tax under § 501(a).

ANALYSIS

Situation 1

The amendment to the X Profit Sharing Plan to require certain contributions of the dollar equivalent of unused paid time off to the X Profit Sharing Plan does not cause the X Profit Sharing Plan to fail to meet the requirements of § 401(a), provided that the contributions satisfy the requirements of § 401(a)(4) (in combination with other contributions and forfeitures allocated for the year). Because C is not provided a right to elect a payment of cash for unused paid time off in lieu of a plan contribution, Company X's contribution of $300x to the X Profit Sharing Plan is not an elective contribution that is made pursuant to a cash or deferred election within the meaning of § 401(k)(2)(A) and § 1.401(k)-(1)(a)(3)(i). Rather, Company X's contribution to the X Profit Sharing Plan is a nonelective employer contribution within the meaning of § 1.401(k)-6.

The amount contributed and allocated for each participant will vary based on the amount of the participant's unused paid time off. Thus, the contributions for unused paid time off are likely to preclude a plan from satisfying a design-based safe harbor

under § 401(a)(4). Therefore, testing based on the contributions made for individual participants generally will be required.

The contributions made pursuant to the arrangement must also not exceed the limitations under § 415(c) (in combination with prior annual additions). Because the contribution of $300x was allocated to C's account as of October 12, 2009, and made on that date (before the end of the 30 day period following the deadline for Company X to file its income tax return), the contribution is subject to the limitations under § 415(c) applicable for the 2009 limitation year and is taken into account for § 401(a)(4) purposes for the 2009 plan year. Under the facts presented, the contribution of $300x (in combination with prior annual additions) does not exceed the limitations of § 415(c) for 2009.

If the requirements of § 401(a)(4) are met, the amount contributed will be included in C's gross income in accordance with § 402(a) only when the amount is distributed to C. Like any other distribution from the X Profit Sharing Plan, the distribution of amounts attributable to the dollar equivalent of unused paid time off is subject to an additional 10% income tax under § 72(t) unless the distribution satisfies one of the exceptions described in § 72(t), such as being made on or after the date on which the participant attains age 59½ or after the participant separates from service after attainment of age 55.

The amendment to the X PTO Plan and the operation of the plan in accordance with the terms of the amendment do not cause the X PTO Plan to fail to qualify as a bona fide sick and vacation leave plan for purposes of § 409A and § 1.409A-1(a)(5).

Situation 2

The amendment to the X Profit Sharing Plan to require certain contributions of the dollar equivalent of unused paid time off to the X Profit Sharing Plan does not cause the X Profit Sharing Plan to fail to meet the requirements of § 401(a) of the Code, provided that the contributions made pursuant to the amendment satisfy the requirements of § 401(a)(4) (in combination with other contributions and forfeitures allocated for the year). Because C is not provided a right to elect a payment of cash for unused paid time off in lieu of a contribution to the X Profit Sharing Plan, Company X's contribution of $150x to the X Profit Sharing Plan is not an elective contribution that is made pursuant to a cash or deferred election within the meaning of § 401(k)(2)(A) and § 1.401(k)-(1)(a)(3)(i). Rather, Company X's contribution to the X Profit Sharing Plan is a nonelective employer contribution within the meaning of § 1.401(k)-6.

The contributions made pursuant to the arrangement must also not exceed the limitations under § 415(c) (in combination with prior annual additions). Because the contribution is allocated to C's account on January 18, 2010, and made on that date (before the end of the 30 day period following the deadline for Company X to file its income tax return), the contribution is subject to the limitations under § 415 applicable for the 2010 limitation year and is taken into account for § 401(a)(4) purposes for the

2010 plan year. Under the facts, none of the $300x exceeds the applicable § 415(c)(1)(A) dollar limit for 2010, so the $150x contribution also would not exceed the applicable § 415(c)(1)(A) dollar limit. However, under § 415(c)(1)(B), the $150x contribution must also not exceed 100 percent of compensation for the 2010 limitation year. Because the $150x contribution is a nonelective contribution, it is not taken into account as compensation for purposes of § 415. However, because the paid time off could have been carried over and used in 2010 had C remained employed, the payment of the remaining $150x to C on January 18 can be included as § 415 compensation for 2010. Accordingly, the allocation of $150x to C's account will provide an allocation of 100 percent of compensation and will not exceed the § 415(c) limitations for the 2010 limitation year.

If the requirements of § 401(a)(4) are met, the amount contributed will be included in C's gross income in accordance with § 402(a) only when the amount is distributed to C. Like any other distribution from the X Profit Sharing Plan, the distribution of amounts attributable to the dollar equivalent of unused paid time off is subject to an additional 10% income tax under § 72(t) unless the distribution satisfies one of the exceptions described in § 72(t), such as being made on or after the date on which the participant attains age 59½ or after the participant separates from service after attainment of age 55.

Under the facts of Situation 2, C terminates employment in 2009, but the contribution to the X Profit Sharing Plan and the cash payment to C occur in 2010. Under the X PTO Plan as amended, the dollar equivalent of unused paid time off is not paid, set apart, or otherwise made available so that C may draw on it either (i) during the 2009 calendar year or (ii) upon conversion in 2009 to a contribution to a qualified plan or cash payment in 2010. Therefore, such amount is not includible in C's gross income in 2009 under the doctrine of constructive receipt and § 451. In addition, the amendment to the X PTO Plan and the operation of the plan in accordance with the terms of the amendment do not cause the X PTO Plan to fail to qualify as a bona fide sick and vacation leave plan for purposes of § 409A and § 1.409A-1(a)(5). The $150x payment is includible in C's gross income in 2010, the taxable year in which it is paid to C.

Situation 3

The amendment to the W 401(k) Plan to permit certain contributions of the dollar equivalent of unused paid time off to the W 401(k) Plan does not cause the W 401(k) Plan to fail to meet the requirements of §§ 401(a) and 401(k), provided that the contributions (taking into account other contributions, prior deferrals, and prior annual additions, as applicable) satisfy the nondiscrimination requirements of § 401(k) and the applicable limitations of §§ 401(a)(30) and 415(c).

Because D is provided a right to elect either a payment of cash or a plan contribution for the dollar equivalent of unused paid time off that may not be carried over to the following year, Company W's contribution of $210x to the W 401(k) Plan is an

elective contribution. Because the contribution is allocated to D's account as of October 19, 2009, and is made on that date (before the end of the 30 day period following the deadline for Company W to file its income tax return), the contribution is subject to the limitations under § 415 applicable for the 2009 limitation year. The contribution is also subject to the limitations on elective deferrals under § 401(a)(30) applied for 2009 and the actual deferral percentage nondiscrimination testing under § 401(k)(3)(A)(ii) and § 1.401(k)-2 for the 2009 plan year.

Under the facts presented, the allocation of $210x to D's account (in combination with prior annual additions) does not cause the plan to exceed the limitations of § 415(c). Although the dollar equivalent of the unused paid time off was made available to D in 2009, pursuant to § 402(e)(3) the $210x is not treated as made available to D because the amount was contributed to the plan as part of a qualified cash or deferred arrangement. Accordingly, if the nondiscrimination requirements of § 401(k) and the limitations of § 401(a)(30) are met, the amount contributed will be included in D's gross income in accordance with § 402(a) only when the amount is distributed to D. Like any other distributions from the W 401(k) Plan, the distribution of amounts attributable to the dollar equivalent of unused paid time off is subject to the additional 10% income tax under § 72(t) if the distribution does not meet one of the exceptions of § 72(t), such as being made on or after the date on which the participant attains age 59½ or after the participant separates from service after attainment of age 55.

In addition, the amendment to the W PTO Plan and the operation of the plan in accordance with the terms of the amendment do not cause the W PTO Plan to fail to qualify as a bona fide sick and vacation leave plan for purposes of § 409A and § 1.409A-1(a)(5). The $90x payment is includible in D's gross income in 2009, the taxable year in which it is paid to D.

Situation 4

The amendment to the W 401(k) Plan to permit certain contributions of the dollar equivalent of unused paid time off to the W 401(k) Plan does not cause the W 401(k) Plan to fail to meet the requirements of §§ 401(a) and 401(k), provided that the contributions (taking into account other contributions, prior deferrals, and prior annual additions, as applicable) satisfy the nondiscrimination requirements of § 401(k) and the applicable limitations of §§ 401(a)(30) and 415(c).

Because D is provided a right to elect either a payment of cash or a plan contribution for the dollar equivalent of unused paid time off that may not be carried over to the following year, Company W's contribution of $210x to the W 401(k) Plan is an elective contribution. Because the contribution is made on January 18, 2010, and is allocated as of that date (before the end of the 30 day period following the deadline for Company W to file its income tax return), the contribution is subject to the limitations under § 415 applicable for the 2010 limitation year. The contribution is also subject to the limitations on elective deferrals under § 401(a)(30) applied for 2010 and the actual

deferral percentage nondiscrimination testing under § 401(k)(3)(A)(ii) and § 1.401(k)-2 for the 2010 plan year.

As an elective contribution, the $210x may be treated as compensation for purposes of § 415, so that D's total 2010 compensation for purposes of § 415(c) is $300x (the $210x elective contribution plus the $90x payment). Under the facts presented, the allocation of $210x to D's account (in combination with prior annual additions) will not cause the plan to exceed the limitations of § 415(c). Although the dollar equivalent of the unused paid time off was made available to D in 2010, pursuant to § 402(e)(3) the $210x will not be treated as made available to D because the amount was contributed to the plan as part of a qualified cash or deferred arrangement. Accordingly, if the nondiscrimination requirements of § 401(k) and the limitations of § 401(a)(30) are met, the amount contributed will be included in D's gross income in accordance with § 402(a) only when the amount is distributed to D. Like any other distributions from the W 401(k) Plan, the distribution of amounts attributable to the dollar equivalent of unused paid time off is subject to the additional 10% income tax under § 72(t) if the distribution does not meet one of the exceptions of § 72(t), such as being made on or after the date on which the participant attains age 59½ or after the participant separates from service after attainment of age 55.

Under the facts of Situation 4, D terminates employment in 2009, but the contribution to the X Profit Sharing Plan and the cash payment to D occur in 2010. Under the X PTO Plan as amended, the dollar equivalent of unused paid time off is not paid, set apart, or otherwise made available so that D may draw on it either (i) during the 2009 calendar year or (ii) upon conversion in 2009 to a contribution to a qualified plan or cash payment in 2010. Therefore, such amount is not includible in D's gross income in 2009 under the doctrine of constructive receipt and § 451. In addition, the amendment to the W PTO Plan and the operation of the plan in accordance with the terms of the amendment do not cause the W PTO Plan to fail to qualify as a bona fide sick and vacation leave plan for purposes of § 409A and § 1.409A-1(a)(5). The $90x payment is includible in D's gross income in 2010, the taxable year in which it is paid to D.

HOLDING

(3) Under the facts presented, the amendments requiring or permitting certain contributions of the dollar equivalent of unused paid time off to a qualified profit-sharing plan do not cause the plan to fail to meet the qualification requirements of § 401(a), provided that the contributions satisfy the applicable requirements of §§ 401(a)(4) and 415(c) and, where applicable, §§ 401(k) and 401(a)(30).

(4) Under the facts presented, assuming the applicable qualification requirements are satisfied, a participant does not include in gross income contributions of the dollar equivalent of unused paid time off to the profit-sharing plan in accordance with § 402(a) until distributions are made to the participant from the plan and does not include in gross income an amount paid for the dollar equivalent of

unused paid time off that is not contributed to the profit-sharing plan until the taxable year in which the amount is paid to the participant.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Robert Gertner, Roger Kuehnle, and Alice Lynch of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this revenue ruling may be sent via e-mail to retirementplanquestions@irs.gov.

Part III – Administrative, Procedural and Miscellaneous

Adding Automatic Enrollment to Section 401(k) Plans -- Sample Amendments

Notice 2009-65

I. PURPOSE

This notice facilitates automatic enrollment by providing two sample plan amendments for sponsors, practitioners, and employers who want to add certain automatic contribution features to their § 401(k) plans. Sample Amendment 1 can be used to add an automatic contribution arrangement to a § 401(k) plan. Sample Amendment 2 can be used to add an eligible automatic contribution arrangement described in § 414(w) of the Internal Revenue Code (permitting 90-day withdrawals) to a § 401(k) plan.

II. BACKGROUND

Rev. Rul. 2000-8, 2000-1 C.B. 617, provides guidance on automatic contribution arrangements in § 401(k) plans, and under § 1.401(k)-1(a)(3)(ii) of the Income Tax Regulations, the default that applies under a § 401(k) plan in the absence of an employee's affirmative election can be for the employer to make elective contributions to the plan on the employee's behalf.

Under § 1.401(k)-1(e)(2)(ii), a § 401(k) plan must provide an eligible employee an effective opportunity to make (or change) a cash or deferred election at least once during each plan year, and whether an eligible employee has an effective opportunity is determined based on all the relevant facts and circumstances, including the adequacy of notice of the availability of the election, the period of time during which an election may be made, and any other conditions on elections.

Section 902 of the Pension Protection Act of 2006, Public Law 109-280 (PPA '06), added §§ 401(k)(13), 401(m)(12), and 414(w) to the Code and amended §§ 411(a)(3)(G) and 4979 to facilitate automatic contribution arrangements in qualified cash or deferred arrangements under § 401(k). Final regulations under these Code sections were published in the *Federal Register* on February 24, 2009 (74 F.R. 8200). Section 1107 of PPA '06 provided generally that any plan amendment made pursuant to PPA '06 can be made as late as the last day of the first plan year beginning on or after January 1, 2009 (2011 in the case of a governmental plan).

III. SAMPLE PLAN AMENDMENTS

In General. Two sample plan amendments are provided in the Appendix that sponsors, practitioners, and employers ("plan sponsors") can adopt or use in drafting individualized plan amendments. Because each amendment is a sample amendment,

plan sponsors are not required to adopt either amendment verbatim. In fact, it may be necessary for plan sponsors to modify the chosen amendment to conform to their plan's terms and administrative procedures.

Time and Manner of Adoption. Plan sponsors who want to add one of the sample amendments to their § 401(k) plans must adopt the chosen amendment by the later of (1) the end of the plan year in which the amendment is effective, pursuant to the deadline to adopt a discretionary amendment as provided in § 5.05(2) of Rev. Proc. 2007-44, 2007-2 C.B 54; or (2) if applicable, the deadline under § 1107 of PPA '06 for adopting an amendment made pursuant to PPA '06. Pursuant to § 5.06(1) of Rev. Proc 2007-44, a later deadline may apply to a governmental plan. The timely adoption of the chosen amendment must be evidenced by a written document that is signed and dated by the employer (including an adopting employer of a pre-approved plan). However, regardless of when the amendment is adopted, the proper notice describing the features of the plan as amended must be provided to employees affected by the amendment within a reasonable period before the amendment is effective.

Effect on Reliance. The adoption of either sample plan amendment (as modified, if necessary to conform to the plan's terms and administrative procedures) will not result in the loss of reliance on a favorable opinion, advisory, or determination letter. Also, the Service will not treat the adoption of one of the amendments as affecting the pre-approved status of a master and prototype ("M&P") or volume submitter plan. That is, such an amendment to an M&P plan that is adopted by an employer will not cause the plan to fail to be an M&P plan. Similarly, such an amendment to a volume submitter plan that is adopted by an employer will not cause the plan to fail to be a volume submitter plan.

Format of the Sample Amendments. The format of the sample plan amendments generally follows the design of pre-approved plans, including all M&P plans, that employ a "basic plan document" and an "adoption agreement." Thus, the sample plan amendments include language designed for inclusion in a basic plan document and language designed for inclusion in an adoption agreement to allow the employer to select among options related to the application of the basic plan document provision. Sponsors of plans that do not use an adoption agreement should modify the format of the chosen amendment to incorporate the appropriate adoption agreement options in the terms of the amendment. In such case, the notes in the adoption agreement portion of the sample amendment should not be included in the amendment that will be signed and dated by the employer.

DRAFTING INFORMATION

The principal author of this notice is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this notice may be sent via e-mail to RetirementPlanQuestions@irs.gov.

Appendix

Sample Amendment 1

Article [ ] Automatic Contribution Arrangement

Section 1. Rules of Application

1.1 If the Employer has elected the automatic contribution arrangement option in the adoption agreement, the provisions of this Article shall apply and, to the extent that any other provision of the Plan is inconsistent with the provisions of this Article, the provisions of this Article shall govern.

1.2 Default Elective Deferrals will be made on behalf of Covered Employees who do not have an affirmative election in effect regarding Elective Deferrals. The amount of Default Elective Deferrals made for a Covered Employee each pay period is equal to the Default Percentage specified in the adoption agreement multiplied by the Covered Employee's compensation for that pay period. If the Employer has so elected in the adoption agreement, a Covered Employee's Default Percentage will increase by a designated percentage point or points each Plan Year up to the maximum, beginning with the second Plan Year that begins after the Default Percentage first applies to the Covered Employee. The increase will be effective beginning with the first pay period that begins in such Plan Year or, if elected by the Employer in the adoption agreement, the first pay period in such Plan Year that begins on or after the date specified in the adoption agreement.

1.3 A Covered Employee will have a reasonable opportunity after receipt of the notice described in Section 3 of this Article to make an affirmative election regarding Elective Deferrals (either to have no Elective Deferrals made or to have a different amount of Elective Deferrals made) before Default Elective Deferrals are made on the Covered Employee's behalf. Default Elective Deferrals being made on behalf of a Covered Employee will cease as soon as administratively feasible after the Covered Employee makes an affirmative election.

Section 2. Definitions

2.1 An "automatic contribution arrangement" is an arrangement under which, in the absence of an affirmative election by a Covered Employee, a certain percentage of compensation will be withheld from the Covered Employee's pay and contributed to the Plan as an Elective Deferral.

2.2 A "Covered Employee" is a Plan participant identified in the adoption agreement as being covered under the automatic contribution arrangement.

2.3 "Default Elective Deferrals" are Elective Deferrals contributed to the Plan under the automatic contribution arrangement on behalf of Covered Employees who do not have an affirmative election in effect regarding Elective Deferrals.

2.4 The "Default Percentage" is the percentage of a Covered Employee's compensation contributed to the Plan as a Default Elective Deferral for a Plan Year. The Default Percentage is specified in the adoption agreement.

Section 3. Notice Requirement

3.1 At least 30 days, but not more than 90 days, before the beginning of the Plan Year, the Employer will provide each Covered Employee a comprehensive notice of the Covered Employee's rights and obligations under the automatic contribution arrangement, written in a manner calculated to be understood by the average Covered Employee. If an employee becomes a Covered Employee after the 90th day before the beginning of the Plan Year and does not receive the notice for that reason, the notice will be provided no more than 90 days before the employee becomes a Covered Employee but not later than the date the employee becomes a Covered Employee.

3.2 The notice will accurately describe:

(a) The amount of Default Elective Deferrals that will be made on the Covered Employee's behalf in the absence of an affirmative election;
(b) The Covered Employee's right to elect to have no Elective Deferrals made on his or her behalf or to have a different amount of Elective Deferrals made; and
(c) How Default Elective Deferrals will be invested in the absence of the Covered Employee's investment instructions.

Sample Adoption Agreement Language:

Article [ ] Automatic Contribution Arrangement

[ ] If checked, the Automatic Contribution Arrangement provisions of Article [ ] apply.

Section 1. Covered Employee

Employees covered under the automatic contribution arrangement are: *(check one of the options below)*

[ ] All Plan participants.
[ ] All Plan participants who do not have an affirmative election in effect regarding Elective Deferrals.
[ ] All Plan participants who become Plan participants on or after the effective date of the automatic contribution arrangement and who do not have an affirmative election in effect regarding Elective Deferrals.

Section 2. Default Percentage (*Check one of the options below and insert a percentage or percentages and, if applicable, a date.*)

[ ] The Default Percentage is [ ]%.
[ ] The initial Default Percentage is [ ]% and will increase by [ ] (*insert a number*) percentage point(s) as described in Section 1.2 of Article [ ] of the Plan until the Default Percentage is [ ]%. (*Insert the highest Default Percentage that will apply.*) Each increase will be effective at the beginning of the Plan Year unless a different date is inserted here: _____. (*Insert the date of each increase.*)

Section 3. Effective Date

The Automatic Contribution Arrangement under Article [ ] is effective _____. (*Insert the date the amendment is effective.*)

_____
Name of Employer

_____
By: Signature Date

_____
Name and title

Sample Amendment 2

Article [ ] Eligible Automatic Contribution Arrangement (EACA)

Section 1. Rules of Application

1.1 If the Employer has elected the EACA option in the adoption agreement, the provisions of this Article shall apply for the Plan Year and, to the extent that any other provision of the Plan is inconsistent with the provisions of this Article, the provisions of this Article shall govern.

1.2 Default Elective Deferrals will be made on behalf of Covered Employees who do not have an affirmative election in effect regarding Elective Deferrals. The amount of Default Elective Deferrals made for a Covered Employee each pay period is equal to the Default Percentage specified in the adoption agreement multiplied by the Covered Employee's compensation for that pay period. If the Employer has so elected in the adoption agreement, a Covered Employee's Default Percentage will increase by a designated percentage point or points each Plan Year, beginning with the second Plan Year that begins after the Default Percentage first applies to the Covered Employee. The increase will be effective beginning with the first pay period that begins in such Plan

Year or, if elected by the Employer in the adoption agreement, the first pay period in such Plan Year that begins on or after the date specified in the adoption agreement.

1.3 A Covered Employee will have a reasonable opportunity after receipt of the notice described in Section 4 of this Article to make an affirmative election regarding Elective Deferrals (either to have no Elective Deferrals made or to have a different amount of Elective Deferrals made) before Default Elective Deferrals are made on the Covered Employee's behalf. Default Elective Deferrals being made on behalf of a Covered Employee will cease as soon as administratively feasible after the Covered Employee makes an affirmative election.

Section 2. Definitions

2.1 An "EACA" is an automatic contribution arrangement that satisfies the uniformity requirement in Section 3 of this Article and the notice requirement in Section 4 of this Article.

2.2 An "automatic contribution arrangement" is an arrangement under which, in the absence of an affirmative election by a Covered Employee, a certain percentage of compensation will be withheld from the Covered Employee's pay and contributed to the Plan as an Elective Deferral.

2.3 A "Covered Employee" is a Plan participant identified in the adoption agreement as being covered under the EACA.

2.4 "Default Elective Deferrals" are the Elective Deferrals contributed to the Plan under the EACA on behalf of Covered Employees who do not have an affirmative election in effect regarding Elective Deferrals.

2.5 The "Default Percentage" is the percentage of a Covered Employee's compensation contributed to the Plan as a Default Elective Deferral for the Plan Year. The Default Percentage is specified in the adoption agreement.

Section 3. Uniformity Requirement

3.1 Except as provided in Section 3.2 below or if the Employer has elected an increasing Default Percentage in the adoption agreement, the same percentage of compensation will be withheld as Default Elective Deferrals from all Covered Employees subject to the Default Percentage.

3.2 Default Elective Deferrals will be reduced or stopped to meet the limitations under Code §§ 401(a)(17), 402(g), and 415 and to satisfy any suspension period required after a hardship distribution.

Section 4. Notice Requirement

4.1 At least 30 days, but not more than 90 days, before the beginning of the Plan Year, the Employer will provide each Covered Employee a comprehensive notice of the Covered Employee's rights and obligations under the EACA, written in a manner calculated to be understood by the average Covered Employee. If an employee becomes a Covered Employee after the 90th day before the beginning of the Plan Year and does not receive the notice for that reason, the notice will be provided no more than 90 days before the employee becomes a Covered Employee but not later than the date the employee becomes a Covered Employee.

4.2 The notice must accurately describe:

(a) The amount of Default Elective Deferrals that will be made on the Covered Employee's behalf in the absence of an affirmative election;
(b) The Covered Employee's right to elect to have no Elective Deferrals made on his or her behalf or to have a different amount of Elective Deferrals made;
(c) How Default Elective Deferrals will be invested in the absence of the Covered Employee's investment instructions; and
(d) The Covered Employee's right to make a withdrawal of Default Elective Deferrals and the procedures for making such a withdrawal.

Section 5. Withdrawal of Default Elective Deferrals

5.1 No later than 90 days after Default Elective Deferrals are first withheld from a Covered Employee's pay, the Covered Employee may request a distribution of his or her Default Elective Deferrals. No spousal consent is required for a withdrawal under this Section 5.

5.2 The amount to be distributed from the Plan upon the Covered Employee's request is equal to the amount of Default Elective Deferrals made through the earlier of (a) the pay date for the second payroll period that begins after the Covered Employee's withdrawal request and (b) the first pay date that occurs after 30 days after the Covered Employee's request, plus attributable earnings through the date of distribution. Any fee charged to the Covered Employee for the withdrawal may not be greater than any other fee charged for a cash distribution.

5.3 Unless the Covered Employee affirmatively elects otherwise, any withdrawal request will be treated as an affirmative election to stop having Elective Deferrals made on the Covered Employee's behalf as of the date specified in Section 5.2 above.

5.4 Default Elective Deferrals distributed pursuant to this Section 5 are not counted towards the dollar limitation on Elective Deferrals contained in Code § 402(g) nor for the ADP test. Matching Contributions that might otherwise be allocated to a Covered Employee's account on behalf of Default Elective Deferrals will not be allocated to the extent the Covered Employee withdraws such Elective Deferrals pursuant to this Section 5 and any Matching Contributions already made on account of Default Elective Deferrals that are later withdrawn pursuant to this Section 5 will be forfeited.

Section 6. Special Rule for Distribution of Excess Contributions and Excess Aggregate Contributions

If the Employer has elected in the adoption agreement that all Plan participants are Covered Employees, then the Plan has until 6 months (rather than 2½ months) after the end of the Plan Year to distribute Excess Contributions and Excess Aggregate Contributions and avoid the Code § 4979 10% excise tax.

Sample Adoption Agreement Language:

Article [ ] Eligible Automatic Contribution Arrangement (EACA)

[ ] If checked, the Eligible Automatic Contribution Arrangement (EACA) provisions of Article [ ] apply.

Section 1. Covered Employee

Employees covered under the EACA are: *(check one of the options below)*

[ ] All Plan participants.
[ ] All Plan participants who do not have an affirmative election in effect regarding Elective Deferrals.
[ ] All Plan participants who become Plan participants on or after the effective date of the EACA and who do not have an affirmative election in effect regarding Elective Deferrals.

Section 2. Default Percentage (*Check one of the options below and insert a percentage or percentages and, if applicable, a date.*)

[ ] The Default Percentage is [ ]%.
[ ] The initial Default Percentage is [ ]% and will increase by [ ] (*insert a number*) percentage point(s) as described in Section 1.2 of Article [ ] of the Plan until the Default Percentage is [ ]%. (*Insert the highest Default Percentage that will apply.*) Each increase will be effective at the beginning of the Plan Year unless a different date is inserted here: _____. (*Insert the date of each increase.*)

Section 3. Effective Date

The Eligible Automatic Contribution Arrangement (EACA) under Article [ ] is effective _____. (*Insert the first day of the Plan Year for which the EACA applies or the date the Plan is effective, if later.*)

_____
Name of Employer

By: Signature Date

Name and title

Part III - Administrative, Procedural and Miscellaneous

Automatic Enrollment in SIMPLE IRAs

Notice 2009-66

I. PURPOSE

This notice provides guidance to facilitate automatic enrollment in SIMPLE IRA plans, including questions and answers relating to the inclusion in a SIMPLE IRA plan of an automatic contribution arrangement. See also Notice 2009-67, IRB 2009-39, ___, which provides a sample amendment that may be used to add an automatic contribution arrangement to a SIMPLE IRA plan.

II. BACKGROUND

Section 408(p) provides rules for a SIMPLE IRA plan, which is a simplified tax-favored retirement plan for small employers. Notice 98-4, 1998-1 C.B. 269, provides guidance with respect to SIMPLE IRA plans.

Under a SIMPLE IRA plan, contributions are made to SIMPLE individual retirement accounts or annuities (referred to as "SIMPLE IRAs") established pursuant to the plan adopted by the employer. A SIMPLE IRA plan must be maintained on a calendar-year basis. A new SIMPLE IRA plan is generally permitted to be established as of any date between January 1 and October 1, or, in the case of an employer that comes into existence after October 1, a SIMPLE IRA plan is permitted to be established as soon as administratively feasible after the employer comes into existence. In addition, the SIMPLE IRA plan must be the only plan maintained by the employer, except for a plan in which only employees covered by a collective bargaining agreement are eligible to participate.

Contributions under a SIMPLE IRA plan consist of salary reduction contributions, i.e., contributions made at the election of an employee eligible to participate in the plan (an "eligible employee"), as well as employer matching contributions required to be made with respect to each eligible employee's salary reduction contributions. Subject to a notice requirement, an employer may elect to make nonelective contributions rather than matching contributions. These salary reduction contributions and employer matching or nonelective contributions must be the only contributions under the plan.

All contributions to an eligible employee's SIMPLE IRA must be nonforfeitable. Employer contributions are not permitted to be conditioned on the retention of the contributions in an employee's SIMPLE IRA, and the employer is not permitted to impose any restrictions on withdrawals from the SIMPLE IRA.

Salary reduction contributions to a SIMPLE IRA are subject to a dollar limit (the "SIMPLE IRA dollar limit," $11,500 for 2009) and are also taken into account in applying the dollar limit under § 402(g) on all elective contributions made by an individual to employer-sponsored retirement plans (the "aggregate dollar limit," $16,500 for 2009). In the case of an individual who is at least 50 years old, these dollar limits are increased by the amount of permissible catch-up contributions ($2,500 for 2009 in the case of the SIMPLE IRA dollar limit and $5,500 for 2009 in the case of the aggregate dollar limit).

Each eligible employee under a SIMPLE IRA plan must be permitted to elect, during the 60-day period immediately preceding the beginning of the calendar year, i.e., November 2 to December 31 (the "annual 60-day election period"), to make salary reduction contributions for the year or to change the amount of such contributions under a prior election, including changing the amount to $0. For the first year an employee is

eligible to make salary reduction contributions, including the first year a SIMPLE IRA plan is established, the employee must be given a 60-day election period (the "initial 60-day election period") that includes either the date the employee becomes eligible or the day before that date. For example, if a newly hired employee becomes eligible to make salary reduction contributions on July 19, 2010, then the 60-day period can begin as early as May 20, 2010 (thus including July 18, 2010, the day before the employee's eligibility date) or as late as July 19, 2010. A SIMPLE IRA plan may also permit an eligible employee to make or change a salary reduction contribution election during additional or longer election periods.

An employee must be permitted to terminate a salary reduction contribution election at any time during the year. If the employee does so outside of the election period or periods provided under the SIMPLE IRA plan for making or changing salary reduction contribution elections, then the SIMPLE IRA plan may provide that the employee is not permitted to resume salary reduction contributions until the next year.

Immediately before an eligible employee's annual or initial 60-day election period, the employer must notify the employee of the opportunity to elect to make salary reduction contributions (or to change a prior election) and must include a copy of a summary description of the SIMPLE IRA plan. The summary description used for this purpose must be provided to the employer by the SIMPLE IRA trustee and must describe the benefits provided under the SIMPLE IRA plan, the time and method of making elections under the plan, and the procedures for, and effects of, making withdrawals, including rollovers, from the SIMPLE IRA.

In general, a SIMPLE IRA plan must permit each eligible employee to select the financial institution to which SIMPLE IRA contributions are made on behalf of the employee. Alternatively, an employer is permitted to establish a SIMPLE IRA plan with a designated financial institution, so that all contributions under the plan are made to SIMPLE IRAs at the designated institution. In that case, an employee must be given a reasonable period of time each year in which to transfer his or her SIMPLE IRA balance without cost or penalty from the designated financial institution to a SIMPLE IRA at another financial institution selected by the employee. This requirement is deemed to be met if an employee has until the end of the employee's annual or initial 60-day election period to request to transfer, without cost or penalty, the balance attributable to contributions made for the next year (or for the remainder of the year in the case of an initial election period) and subsequent years to a SIMPLE IRA at another financial institution selected by the employee. The right to make such a transfer must be included in the notice provided to the employee immediately before the election period.

Distributions from a SIMPLE IRA are includible in gross income for the taxable year in which made unless rolled over to another SIMPLE IRA or tax-favored retirement plan. Distributions made during the 2-year period beginning when an employee first participates in any SIMPLE IRA plan of the employer (the employee's "initial two-year participation period") are permitted to be rolled over only to another SIMPLE IRA. Distributions made before age 59-1/2 are subject to the additional 10-percent tax on early withdrawals under § 72(t) unless the distribution is rolled over or an exception applies. However, in the case of a distribution from a SIMPLE IRA made during the

employee's initial two-year participation period, the rate of the additional tax is 25 percent rather than 10 percent.

An automatic contribution arrangement is an arrangement under which, in the absence of an affirmative election by an employee, a default election applies whereby the employee is treated as having elected to have a portion of the employee's compensation contributed to a tax-favored retirement plan as default elective contributions rather than paid to the employee in cash.

III. QUESTIONS AND ANSWERS ON AUTOMATIC ENROLLMENT IN SIMPLE IRA PLANS

Q-1: May a SIMPLE IRA plan include an automatic contribution arrangement? A-1: Yes. Section 408(p) requires that an employee eligible to participate in a SIMPLE IRA plan have an election between the employer paying cash to the employee or making a contribution to a SIMPLE IRA on behalf of the employee. It does not, however, require that the employee receive an amount in cash in any case in which the employee does not make an affirmative election to have that amount contributed to the SIMPLE IRA. Thus, for purposes of determining whether a contribution is a salary reduction contribution to a SIMPLE IRA, it is irrelevant whether the default that applies in the absence of an affirmative election is (1) for the employee to receive an amount in cash or (2) for the employer to contribute an amount to the SIMPLE IRA.

Q-2: May a SIMPLE IRA plan that includes an automatic contribution arrangement provide that default salary reduction contributions are made only for employees who are first eligible under the SIMPLE IRA plan on or after the effective date of the automatic

contribution arrangement and who do not make an affirmative election (including an affirmative election of zero)?

A-2: Yes.

Q-3: May a SIMPLE IRA plan that includes an automatic contribution arrangement provide that the percentage of compensation at which default salary reduction contributions are made for an employee increases based on the number of years or portions of years for which default salary reduction contributions have been made for the employee?

A-3: Yes.

Q-4: What notice requirements apply to a SIMPLE IRA plan that includes an automatic contribution arrangement?

A-4: In addition to the information otherwise required to be included in a SIMPLE IRA notice, the notice must explain (1) the percentage of compensation at which default salary reduction contributions will be made on the employee's behalf if the employee does not make an affirmative election, (2) the employee's right to elect not to have default salary reduction contributions made to the SIMPLE IRA or to have salary reduction contributions made at a different percentage of compensation or, if permitted under the SIMPLE IRA plan, in a different dollar amount, and (3) how default salary reduction contributions will be invested in the absence of any investment election by the employee. In the case of a SIMPLE IRA plan under which all contributions are made to a designated financial institution, the notice must also explain the additional period (as discussed in Q&A-5 of this notice) during which an employee may elect to transfer his or her balance without cost or penalty to another SIMPLE IRA.

Q-5: In the case of a SIMPLE IRA plan under which all contributions are made to a designated financial institution, how does an employee's right to transfer his or her balance without cost or penalty to another SIMPLE IRA apply if default salary reduction contributions are made for an employee under an automatic contribution arrangement?

A-5: As discussed in Section II of this notice, an employee must be permitted during his or her annual or initial 60-day election period to request to transfer, without cost or penalty, the balance attributable to contributions made for the next year (or for the remainder of the year in the case of an initial election period) and subsequent years to a SIMPLE IRA at another financial institution selected by the employee. If default salary reduction contributions for an employee are made to a designated financial institution, the employee must also be permitted, during the first 60 calendar days of the first year for which default salary reduction contributions are made (or the remainder of the first year in the case of an initial election period), to elect to transfer, without cost or penalty, his or her balance attributable to contributions made for that year and subsequent years to a SIMPLE IRA at another financial institution selected by the employee.

Q-6: In the case of a SIMPLE IRA plan that is covered by the fiduciary duty requirements of § 404 of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), does fiduciary relief under § 404(c)(5) of ERISA apply with respect to the investment of SIMPLE IRA contributions, including default salary reduction contributions, in default investments (i.e., investments made in the absence of any investment direction by the employee)?

A-6: The Department of Labor has advised the Internal Revenue Service that the regulations under § 404(c)(5) of ERISA relating to qualified default investment

alternatives (29 CFR 2550.404c-5) apply to the investment of contributions, including default salary reduction contributions, under a SIMPLE IRA plan. Therefore, if the requirements of these regulations are met, fiduciary relief under § 404(c)(5) of ERISA applies with respect to the investment of such contributions in default investments.

IV. ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENTS UNDER § 414(w) AND REQUEST FOR COMMENTS

Section 902 of the Pension Protection Act of 2006, Public Law 109-280 (enacted August 17, 2006), added § 414(w) to the Code to facilitate automatic contribution arrangements in § 401(k) plans, § 403(b) plans, and governmental § 457(b) plans. Under § 414(w), an applicable employer plan that contains an eligible automatic contribution arrangement is permitted to allow employees, within 90 days after the date of the first default elective contribution with respect to the employee under the arrangement, to elect to receive a distribution based on the default elective contributions and avoid the additional income tax on early withdrawals under § 72(t). Section 109(b)(5) of the Worker, Retiree, and Employer Recovery Act of 2008, Public Law 110-458 (enacted December 23, 2008), added SIMPLE IRA plans described in § 408(p) of the Code (and salary reduction simplified employee pensions described in § 408(k)(6)) to the list of employer plans that may include an eligible automatic contribution arrangement under § 414(w) of the Code. Final regulations under § 414(w) were published on February 24, 2009 in the *Federal Register* (74 F.R. 8200). The preamble to the regulations provides that they do not reflect guidance on SIMPLE IRA plans that include an eligible automatic contribution arrangement.

Comments are requested on whether the Department of the Treasury and the Service should issue guidance regarding SIMPLE IRA plans that include eligible automatic contribution arrangements under § 414(w) and, if so, what issues should be addressed in the guidance. For example, such issues might include:

- Application to SIMPLE IRA plans of the last sentence of § 414(w)(1) regarding the forfeiture, or other possible treatment, of employer matching contributions that relate to salary reduction contributions withdrawn in a permissible withdrawal under § 414(w);
- Application to SIMPLE IRA plans of the requirement in § 414(w)(3)(B) that default salary reduction contributions be a uniform percentage of compensation; and
- Administrative issues with respect to permissible withdrawals under § 414(w) and associated matching contributions, such as determining the proper amount of a permissible withdrawal, information sharing with respect to a permissible withdrawal, and reporting of a permissible withdrawal.

Comments are also requested on whether the Department of the Treasury and the Service should issue additional guidance regarding SIMPLE IRA plans that include automatic contribution arrangements that are not eligible automatic contribution arrangements under § 414(w) and, if so, what issues should be addressed in the additional guidance.

Written comments can be sent to CC:PA:LPD:DRU (Notice 2009-66), Room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Also, comments may be hand delivered between the hours of 8 a.m. and 4 p.m., Monday through Friday, to CC:PA:LPD:DRU (Notice 2009-66), Courier's Desk,

Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the following e-mail address: notice.comments@irscounsel.treas.gov (Notice 2009-66). All comments will be available for public inspection.

DRAFTING INFORMATION

The principal author of this notice is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this notice may be sent via email to RetirementPlanQuestions@irs.gov.

Part III – Administrative, Procedural and Miscellaneous

Adding Automatic Enrollment to SIMPLE IRA Plans -- Sample Amendment

Notice 2009-67

I. PURPOSE

This notice facilitates automatic enrollment by providing a sample plan amendment that a prototype sponsor of a SIMPLE IRA plan (using a designated financial institution) can use in drafting an amendment to add an automatic contribution arrangement to the SIMPLE IRA plan.

II. BACKGROUND

Section 408(p) of the Internal Revenue Code provides rules for a SIMPLE IRA plan, which is a simplified tax-favored retirement plan for small employers. Notice 98-4, 1998-1 C.B. 269, provides guidance with respect to SIMPLE IRA plans.

An automatic contribution arrangement is an arrangement under which, in the absence of an affirmative election by an employee, a default election applies under which the employee is treated as having elected to have a portion of the employee's compensation contributed to a tax-favored retirement plan rather than paid to the employee in cash. A SIMPLE IRA plan may include an automatic contribution arrangement. See Notice 2009-66, IRB 2009-39, ___.

III. SAMPLE PLAN AMENDMENT

Sponsor Adoption. A sample plan amendment is provided in the Appendix that a prototype sponsor of a SIMPLE IRA plan (using a designated financial institution) can use in drafting an amendment to add an automatic contribution arrangement. Because the amendment is a sample amendment, prototype sponsors are not required to adopt the amendment verbatim. In fact, it may be necessary for prototype sponsors to modify the sample amendment to conform to their SIMPLE IRA plan's terms and administrative procedures. Sponsors that amend their prototype SIMPLE IRA plan documents pursuant to this notice must furnish a copy of the amendment to each adopting employer, regardless of whether the employer will utilize the automatic contribution arrangement.

Employer Adoption. An employer that wants to add an automatic contribution arrangement to its prototype SIMPLE IRA plan (using a designated financial institution) must adopt the amendment, provided by the prototype sponsor, before the effective date of the automatic contribution arrangement. The timely adoption of the amendment must be evidenced by a written document that is signed and dated by the employer and the designated financial institution.

Effect on Reliance. The adoption of the sample plan amendment (as modified, if necessary to conform to the plan's terms and administrative procedures) in accordance with the procedures described above will not result in the loss of reliance on a favorable opinion letter.

IV. MODEL FORMS

The Service expects to issue a revised Form 5305-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) — for Use With a Designated Financial Institution,* that includes an automatic contribution arrangement.

DRAFTING INFORMATION

The principal author of this notice is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this notice may be sent via email to RetirementPlanQuestions@irs.gov.

Appendix
Sample SIMPLE IRA Plan Amendment

Article [ ] Automatic Contribution Arrangement

Section 1. Rules of Application

1.1 If this Article applies, default salary reduction contributions will be made in accordance with this Article. To the extent that any other provision of the SIMPLE IRA Plan is inconsistent with the provisions of this Article, the provisions of this Article shall govern.

1.2 Subject to the limits on salary reduction contributions contained in this SIMPLE IRA Plan, default salary reduction contributions will only be made for an Eligible Employee who: (*select either a or b*)

[ ] a. does not have an affirmative election regarding salary reduction contributions in effect on the effective date of the Automatic Contribution Arrangement or on the date the employee first becomes eligible to make salary reduction contributions, if later.
[ ] b. becomes eligible to make salary reduction contributions on or after the effective date of the Automatic Contribution Arrangement and who does not have an affirmative election regarding salary reduction contributions in effect on the date the employee first becomes eligible to make salary reduction contributions.

Default salary reduction contributions being made on behalf of an Eligible Employee will cease as soon as administratively feasible after the Eligible Employee makes an affirmative election.

1.3 The Default Percentage under the SIMPLE IRA Plan for an Eligible Employee described in Section 1.2 above is: (*Select either a or b and fill in the blanks.*)

[ ] a. Fixed. The Default Percentage is [ ]%.
[ ] b. Increasing. The initial Default Percentage is [ ]%, and each calendar year, beginning with the second calendar year that begins after the Default Percentage first applies to the Eligible Employee, the Default Percentage will increase by [ ] (*insert a number*) percentage point(s) until the Default Percentage is [ ]%. (*Insert the highest Default Percentage that will apply.*) The increase will be effective beginning with the first pay period that begins in such calendar year.

1.4 No default salary reduction contributions will be made on an Eligible Employee's behalf until after the 60-day election period.

Section 2. Definitions

2.1 An "Automatic Contribution Arrangement" is an arrangement under which, in the absence of an affirmative election by an Eligible Employee, a certain percentage of compensation will be withheld from the Eligible Employee's pay and contributed as a salary reduction contribution to the SIMPLE IRA established under this SIMPLE IRA Plan for the Eligible Employee.

2.2 "Default salary reduction contributions" are the salary reduction contributions made to the SIMPLE IRAs of employees described in Section 1.2 above.

2.3 The "Default Percentage" is the percentage of an employee's compensation contributed to the plan as default salary reduction contributions for a calendar year. The Default Percentage is specified in Section 1.3 above.

Section 3. Modified Notice Requirement

3.1 The notice provided to Eligible Employees immediately prior to the 60-day election period must include, for employees described in Section 1.2 above, a comprehensive explanation of the employee's rights and obligations under the Automatic Contribution Arrangement, written in a manner calculated to be understood by the average employee described in Section 1.2 above.

3.2 The notice must accurately describe:

(a) The amount of default salary reduction contributions that will be made on the Eligible Employee's behalf in the absence of an affirmative election and when default salary reduction contributions will start;
(b) The Eligible Employee's right to elect to have no salary reduction contributions made on his or her behalf or to have a different amount of salary reduction contributions made;

(c) How default salary reduction contributions will be invested in the absence of the Eligible Employee's investment instructions; and
(d) If not already permitted under the SIMPLE IRA Plan, the additional period (described in Section 4 below) to make a transfer without cost or penalty from the SIMPLE IRA established for the Eligible Employee at the designated financial institution.

Section 4. Modification of Designated Financial Institution Rules

Notwithstanding any limitation on an Eligible Employee's right to transfer, without cost or penalty, the balance in his or her SIMPLE IRA maintained at a designated financial institution to another SIMPLE IRA, an employee described in Section 1.2 above may request such a transfer during the 60 days immediately following the employee's first 60-day election period under the Automatic Contribution Arrangement. This period is in addition to any other periods provided under this SIMPLE IRA Plan, and the transfer request can apply to the entire balance accrued since default salary reduction contributions were first made on the employee's behalf and to the balance attributable to future contributions, at the employee's request.

Section 5. Effective Date

This Article [ ] is effective _____. (*Insert January 1 of the first calendar year the Automatic Contribution Arrangement applies or the date the SIMPLE IRA Plan is effective, if later.*)

This Article applies only if the effective date is inserted above and the employer and designated financial institution properly execute the amendment.

_____
Name of Employer

_____
By: Signature Date

_____
Name and title

_____
Name of Financial Institution

_____
By: Signature Date

_____
Name and title

Part III – Administrative, Procedural and Miscellaneous

Safe Harbor Explanation – Eligible Rollover Distributions

Notice 2009-68

I. PURPOSE

This notice contains two safe harbor explanations that may be provided to recipients of eligible rollover distributions from an employer plan in order to satisfy § 402(f) of the Internal Revenue Code (Code). The first safe harbor explanation applies to a distribution not from a designated Roth account (as described in § 402A). The second safe harbor explanation applies to a distribution from a designated Roth account. These safe harbor explanations update the safe harbor explanations that were published in Notice 2002-3, 2002-1 C.B. 289, to reflect changes in the law. These safe harbor explanations also reorganize and simplify the presentation of the information.

II. BACKGROUND

Section 402(f) requires the plan administrator of a plan qualified under § 401(a) to provide a written explanation to any recipient of an eligible rollover distribution, as defined in § 402(c)(4). In addition, §§ 403(a)(4)(B) and 457(e)(16)(B) require a plan administrator of a § 403(a) plan, or an eligible § 457(b) plan maintained by a governmental employer described in § 457(e)(1)(A) (governmental § 457(b) plan), to provide a written explanation to any recipient of an eligible rollover distribution. Further, § 403(b)(8)(B) requires a payor under a § 403(b) plan to provide a written explanation to the recipient of an eligible rollover distribution.

An eligible rollover distribution is a payment that may be rolled over to an eligible retirement plan, as defined in § 402(c)(8)(B). The term eligible retirement plan means an individual retirement plan or an eligible employer plan. An individual retirement plan (IRA) is defined in § 7701(a)(37) as an individual retirement account described in § 408(a) or an individual retirement annuity described in § 408(b). For purposes of this notice, the term eligible employer plan means: a plan qualified under § 401(a), including a money purchase pension plan, a profit-sharing or stock bonus plan (whether or not the plan includes a qualified cash or deferred arrangement under § 401(k)), and a defined benefit plan; a § 403(a) plan; a § 403(b) plan; or a governmental § 457(b) plan.

The written explanation must describe the direct rollover rules, the mandatory income tax withholding rules for distributions not directly rolled over, the tax treatment of distributions not rolled over, and when distributions may be subject to different restrictions and tax consequences after being rolled over. Section 402(f) provides that this explanation must be given within a reasonable period of time before the plan makes an eligible rollover distribution. Under § 1.402(f)-1, A-5, of the Income Tax Regulations, the requirements of § 402(f) are satisfied if this explanation (§ 402(f) notice) is provided through the use of an electronic medium that complies with the requirements of § 1.401(a)-21. This explanation should be provided only to participants who are eligible to receive distributions that are eligible rollover distributions.

Section 1.402(f)-1, A-1(b), provides that a plan administrator is deemed to have complied with the requirement that a § 402(f) notice contain certain specified information if the plan administrator provides the applicable model § 402(f) notice published by the IRS. The safe harbor explanations in this notice constitute applicable model § 402(f) notices for this purpose.

This notice provides updated safe harbor explanations that reflect changes made to the Code that affect the information required to be provided in a § 402(f) notice, including sections 617 and 657 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), P.L.107-16, and sections 824, 827, 828, 829, and 845 of the Pension Protection Act of 2006 (PPA '06), P.L. 109-280. Section 617(a) of EGTRRA added § 402A of the Code, which allows a plan to permit an employee who makes elective contributions under a qualified cash or deferred arrangement to designate some or all of those contributions as designated Roth contributions.[1] Section 402A(c)(3) provides that a rollover contribution of any payment or distribution to an individual from a designated Roth account may be made only if the contribution is to another designated Roth account of the individual or to a Roth IRA of the individual.

Section 657 of EGTRRA amended § 401(a)(31)(B) of the Code to require that a mandatory distribution of more than $1,000 from a plan qualified under § 401(a) be paid in a direct rollover to an IRA of a designated trustee or issuer if the distributee does not make an affirmative election to have the amount paid in a direct rollover to an eligible retirement plan or to receive the distribution directly. Section 403(a) plans, § 403(b) plans, and governmental § 457(b) plans are also required to comply with § 401(a)(31)(B).

Section 824 of PPA '06 amended the definition of qualified rollover contribution in § 408A of the Code (relating to rollovers to a Roth IRA) to include rollover contributions from any eligible retirement plan as defined in § 402(c)(8)(B). Prior to this amendment, a Roth IRA

[1] A designated Roth contribution is an elective contribution under a cash or deferred arrangement that is (i) designated by the employee at the time of the cash or deferred election as a designated Roth contribution that is being made in lieu of all or a portion of the pre-tax elective contribution the employee is eligible to make under the plan, (ii) treated by the employer as includible in the employee's gross income at the time the employee would have received the amount in cash if the employee had not made the cash or deferred election, and (iii) maintained by the plan in a separate account.

could only accept rollover contributions from another Roth IRA, a non-Roth IRA, or a designated Roth account described in § 402A. Section 408A(d)(3)(A) provides that a taxpayer who makes a rollover to a Roth IRA from an eligible employer plan that is not from a designated Roth account must include in gross income the amount of the rollover contribution (other than after-tax contributions). Such a rollover to a Roth IRA is permitted only if the recipient's modified adjusted gross income for the year of the distribution does not exceed $100,000 and, if married, the recipient files a joint return. Pursuant to section 512 of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), P.L. 109-222, the $100,000 income and joint filing requirements do not apply to distributions made after 2009. Section 408A(d)(3)(A), as modified by TIPRA, provides that, in the absence of a contrary election, the amount otherwise required to be included in gross income for any taxable year beginning in 2010 is included in gross income ratably over the 2-year period beginning in 2011. For distributions after 2010, the amount required to be included in income as a result of the distribution being rolled over to a Roth IRA is included in gross income in the year of the distribution.

Under § 72(t)(2)(G) of the Code (as added by section 827 of PPA '06 and modified by section 107 of the Heroes Earnings Assistance and Relief Tax Act of 2008, P.L. 110-245), the 10% additional income tax on early distributions described in § 72(t) does not apply to a qualified reservist distribution. A qualified reservist distribution generally means a distribution from an IRA, or from amounts attributable to employer contributions made as elective deferrals described in § 402(g)(3)(A) or (C) or § 501(c)(18)(D)(iii), made to an individual who was called to active duty for a period in excess of 179 days. Section 72(t)(2)(G) also provides that any individual who receives a qualified reservist distribution may re-contribute the distribution to an IRA without regard to the applicable dollar limitations on contributions.

Under § 72(t)(10) of the Code (as added by section 828 of PPA '06), the 10% additional income tax on early distributions under § 72(t) does not apply to a distribution from a governmental plan, as defined in § 414(d), that is a defined benefit plan if the distribution is made to a qualified public safety employee who separates from service after attainment of age 50. Under § 72(t)(10)(B), a qualified public safety employee is any employee of a State (or political subdivision of a State) who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the State (or political subdivision of the State).

Under § 402(c)(11) of the Code (as added by section 829 of PPA '06), a direct trustee-to-trustee transfer of a distribution from an eligible employer plan to an inherited IRA (within the meaning of § 408(d)(3)(C)) for a nonspouse designated beneficiary is treated as a direct rollover of an eligible rollover distribution for purposes of § 402(c). For plan years beginning after December 31, 2009, pursuant to section 108(f)(2) of the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA '08), P.L. 110-458, the notice requirement of § 402(f) applies to distributions to a nonspouse designated beneficiary.

Section 845 of PPA '06 added § 402(l) of the Code, which generally provides a limited exclusion from gross income for distributions from an eligible employer plan that is a governmental plan (as defined in § 414(d)) that are paid directly to an accident or health plan or a qualified long-term care insurance contract for health or long-term care insurance premiums of an eligible retired public safety officer, his or her spouse, or his or her dependents. Under § 457(a)(3), the § 402(l) exclusion also applies to distributions from a governmental § 457(b) plan. An eligible retired public safety officer is a public safety officer who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety

officer with the employer that maintains the plan. A public safety officer is defined under section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 42 U.S.C. 3796b(9)(A)) as "an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew." The total amount excluded from gross income pursuant to § 402(l) cannot exceed $3,000 annually.

Under § 414(w) (as added by section 902 of PPA '06), an applicable employer plan that contains an eligible automatic contribution arrangement is permitted to allow employees to elect to receive a distribution equal to the amount of the elective contributions under the arrangement (and attributable earnings) made with respect to the employee beginning with the first payroll period to which the arrangement applies to the employee and ending with the effective date of the election. The election must be made within 90 days after the date of the first elective contribution with respect to the employee under the arrangement. The amount of the distribution is not an eligible rollover distribution and is includible in gross income (to the extent not a return of designated Roth contributions) for the taxable year in which the distribution is made, but is not subject to the 10% additional income tax on early distributions under § 72(t).

III. SAFE HARBOR EXPLANATIONS

A principal purpose of the changes in the safe harbor explanations in this notice is to simplify the presentation and description of the participant's options upon receiving an eligible rollover distribution. The new safe harbor explanations also broaden the information to reflect changes in law, such as information on a distribution from a designated Roth account under an employer plan. The information has also been expanded to explain rules that apply in special situations, for example, when a distribution is made to a nonresident alien.

There are two safe harbor explanations in this notice. The first safe harbor explanation does not include information relevant to distributions from a designated Roth account. Thus, the first safe harbor explanation should only be used for a distribution that is not from a designated Roth account. The second safe harbor explanation reflects the rules relating to distributions from a designated Roth account. Thus, the second safe harbor explanation should only be used for a distribution from a designated Roth account, and the IRS and the Department of the Treasury recommend that it only be provided to a participant with a designated Roth account under the Plan. Both explanations should be provided to a participant if the participant is eligible to receive eligible rollover distributions both from a designated Roth account and from an account other than a designated Roth account.

The safe harbor explanation in this notice for distributions not from a designated Roth account meets the requirements of § 402(f) for an eligible rollover distribution that is not from a designated Roth account if provided to the recipient of the eligible rollover distribution within a reasonable period of time before the distribution is made. Similarly, the safe harbor explanation in this notice for distributions from a designated Roth account meets the requirements of § 402(f) for an eligible rollover distribution from a designated Roth account if provided to the recipient of the eligible rollover distribution within a reasonable period of time before the distribution is made.

Section 1.402(f)-1, A-2, currently provides, in general, that a reasonable period of time for providing an explanation is no less than 30 days (subject to waiver) and no more than 90 days before the date on which a distribution is made. Section 1102 of PPA '06 directs that this regulation be modified to permit a notice required to be provided under § 402(f) to be provided to a participant as much as 180 days before the date on which the distribution is made. Thus, the

§ 402(f) notice may be provided as much as 180 days before the annuity starting date (or the date on which the distribution is made). See § 1.402(f)-1, A-2(a), of the Proposed Income Tax Regulations (73 FR 59575).

A plan administrator or payor may customize a safe harbor explanation by omitting any information that does not apply to the plan. For example, if the plan does not hold after-tax employee contributions, it would be appropriate for the section "If your payment includes after-tax contributions" in the explanation for payments not from a designated Roth account to be eliminated. Similarly, if the plan does not provide for distributions of employer stock or other employer securities, it would be appropriate for the section "If your payment includes employer stock that you do not roll over" to be eliminated. Other information that may not be relevant to a particular plan includes, for example, the sections "If your payment is from a governmental section 457(b) plan," and "If you are an eligible retired public safety officer and your pension payment is used to pay for health coverage or qualified long-term care insurance." In addition, the plan administrator or payor may provide additional information with a safe harbor explanation if the information is not inconsistent with § 402(f).

Alternatively, a plan administrator or payor can satisfy § 402(f) by providing an explanation that is different from a safe harbor explanation. Any explanation must contain the information required by § 402(f) and must be written in a manner designed to be easily understood.

If the law governing the tax treatment of distributions or other provisions described in a safe harbor explanation in this notice is amended after September 28, 2009, the safe harbor explanation will not satisfy § 402(f) to the extent that the safe harbor explanation no longer accurately describes the relevant law. The safe harbor explanations in Notice 2002-3,

appropriately modified to reflect statutory changes since Notice 2002-3 was published, will continue to be safe harbor explanations with respect to notices provided through December 31, 2009.

It is expected that the IRS will publish a Spanish translation of these safe harbor explanations.

EFFECT ON OTHER DOCUMENTS

Notice 2002-3 is modified and superseded.

DRAFTING INFORMATION

The principal authors of this notice are Kathleen Herrmann of the Employee Plans, Tax Exempt and Government Entities Division, and Michael P. Brewer of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). Questions regarding this notice may be sent via e-mail to retirementplanquestions@irs.gov. Mr. Brewer may be reached at 202-622-6090 (not a toll-free call).

* * *

YOUR ROLLOVER OPTIONS

You are receiving this notice because all or a portion of a payment you are receiving from the [INSERT NAME OF PLAN] (the "Plan") is eligible to be rolled over to an IRA or an employer plan. This notice is intended to help you decide whether to do such a rollover.

This notice describes the rollover rules that apply to payments from the Plan that are not from a designated Roth account (a type of account with special tax rules in some employer plans). If you also receive a payment from a designated Roth account in the Plan, you will be provided a different notice for that payment, and the Plan administrator or the payor will tell you the amount that is being paid from each account.

Rules that apply to most payments from a plan are described in the "General Information About Rollovers" section. Special rules that only apply in certain circumstances are described in the "Special Rules and Options" section.

GENERAL INFORMATION ABOUT ROLLOVERS

How can a rollover affect my taxes?

You will be taxed on a payment from the Plan if you do not roll it over. If you are under age 59½ and do not do a rollover, you will also have to pay a 10% additional income tax on early distributions (unless an exception applies). However, if you do a rollover, you will not have to pay tax until you receive payments later and the 10% additional income tax will not apply if those payments are made after you are age 59½ (or if an exception applies).

Where may I roll over the payment?

You may roll over the payment to either an IRA (an individual retirement account or individual retirement annuity) or an employer plan (a tax-qualified plan, section 403(b) plan, or governmental section 457(b) plan) that will accept the rollover. The rules of the IRA or employer plan that holds the rollover will determine your investment options, fees, and rights to payment from the IRA or employer plan (for example, no spousal consent rules apply to IRAs and IRAs may not provide loans). Further, the amount rolled over will become subject to the tax rules that apply to the IRA or employer plan.

How do I do a rollover?

There are two ways to do a rollover. You can do either a direct rollover or a 60-day rollover.

If you do a direct rollover, the Plan will make the payment directly to your IRA or an employer plan. You should contact the IRA sponsor or the administrator of the employer plan for information on how to do a direct rollover.

If you do not do a direct rollover, you may still do a rollover by making a deposit into an IRA or eligible employer plan that will accept it. You will have 60 days after you receive the payment to make the deposit. If you do not do a direct rollover, the Plan is required to withhold 20% of the payment for federal income taxes (up to the amount of cash and property received other than employer stock). This means that, in order to roll over the entire payment in a 60-day rollover, you must use other funds to make up for the 20% withheld. If you do not roll over the entire amount of the payment, the portion not rolled over will be taxed and will be subject to the 10% additional income tax on early distributions if you are under age 59½ (unless an exception applies).

How much may I roll over?

If you wish to do a rollover, you may roll over all or part of the amount eligible for rollover. Any payment from the Plan is eligible for rollover, except:

- Certain payments spread over a period of at least 10 years or over your life or life expectancy (or the lives or joint life expectancy of you and your beneficiary)
- Required minimum distributions after age 70½ (or after death)
- Hardship distributions
- ESOP dividends
- Corrective distributions of contributions that exceed tax law limitations
- Loans treated as deemed distributions (for example, loans in default due to missed payments before your employment ends)
- Cost of life insurance paid by the Plan
- Contributions made under special automatic enrollment rules that are withdrawn pursuant to your request within 90 days of enrollment
- Amounts treated as distributed because of a prohibited allocation of S corporation stock under an ESOP (also, there will generally be adverse tax consequences if you roll over a distribution of S corporation stock to an IRA).

The Plan administrator or the payor can tell you what portion of a payment is eligible for rollover.

If I don't do a rollover, will I have to pay the 10% additional income tax on early distributions?

If you are under age 59½, you will have to pay the 10% additional income tax on early distributions for any payment from the Plan (including amounts withheld for income tax) that you do not roll over, unless one of the exceptions listed below applies. This tax is in addition to the regular income tax on the payment not rolled over.

The 10% additional income tax does not apply to the following payments from the Plan:

- Payments made after you separate from service if you will be at least age 55 in the year of the separation
- Payments that start after you separate from service if paid at least annually in equal or close to equal amounts over your life or life expectancy (or the lives or joint life expectancy of you and your beneficiary)
- Payments from a governmental defined benefit pension plan made after you separate from service if you are a public safety employee and you are at least age 50 in the year of the separation
- Payments made due to disability
- Payments after your death
- Payments of ESOP dividends
- Corrective distributions of contributions that exceed tax law limitations
- Cost of life insurance paid by the Plan
- Contributions made under special automatic enrollment rules that are withdrawn pursuant to your request within 90 days of enrollment
- Payments made directly to the government to satisfy a federal tax levy
- Payments made under a qualified domestic relations order (QDRO)
- Payments up to the amount of your deductible medical expenses
- Certain payments made while you are on active duty if you were a member of a reserve component called to duty after September 11, 2001 for more than 179 days
- Payments of certain automatic enrollment contributions requested to be withdrawn within 90 days of the first contribution.

If I do a rollover to an IRA, will the 10% additional income tax apply to early distributions from the IRA?

If you receive a payment from an IRA when you are under age 59½, you will have to pay the 10% additional income tax on early distributions from the IRA, unless an exception applies. In general, the exceptions to the 10% additional income tax for early distributions from an IRA are the same as the exceptions listed above for early distributions from a plan. However, there are a few differences for payments from an IRA, including:

- There is no exception for payments after separation from service that are made after age 55.
- The exception for qualified domestic relations orders (QDROs) does not apply (although a special rule applies under which, as part of a divorce or separation agreement, a tax-free transfer may be made directly to an IRA of a spouse or former spouse).
- The exception for payments made at least annually in equal or close to equal amounts over a specified period applies without regard to whether you have had a separation from service.
- There are additional exceptions for (1) payments for qualified higher education expenses, (2) payments up to $10,000 used in a qualified first-time home purchase, and (3) payments after you have received unemployment compensation for 12 consecutive weeks

(or would have been eligible to receive unemployment compensation but for self-employed status).

Will I owe State income taxes?

This notice does not describe any State or local income tax rules (including withholding rules).

SPECIAL RULES AND OPTIONS

If your payment includes after-tax contributions

After-tax contributions included in a payment are not taxed. If a payment is only part of your benefit, an allocable portion of your after-tax contributions is generally included in the payment. If you have pre-1987 after-tax contributions maintained in a separate account, a special rule may apply to determine whether the after-tax contributions are included in a payment.

You may roll over to an IRA a payment that includes after-tax contributions through either a direct rollover or a 60-day rollover. You must keep track of the aggregate amount of the after-tax contributions in all of your IRAs (in order to determine your taxable income for later payments from the IRAs). If you do a direct rollover of only a portion of the amount paid from the Plan and a portion is paid to you, each of the payments will include an allocable portion of the after-tax contributions. If you do a 60-day rollover to an IRA of only a portion of the payment made to you, the after-tax contributions are treated as rolled over last. For example, assume you are receiving a complete distribution of your benefit which totals $12,000, of which $2,000 is after-tax contributions. In this case, if you roll over $10,000 to an IRA in a 60-day rollover, no amount is taxable because the $2,000 amount not rolled over is treated as being after-tax contributions.

You may roll over to an employer plan all of a payment that includes after-tax contributions, but only through a direct rollover (and only if the receiving plan separately accounts for after-tax contributions and is not a governmental section 457(b) plan). You can do a 60-day rollover to an employer plan of part of a payment that includes after-tax contributions, but only up to the amount of the payment that would be taxable if not rolled over.

If you miss the 60-day rollover deadline

Generally, the 60-day rollover deadline cannot be extended. However, the IRS has the limited authority to waive the deadline under certain extraordinary circumstances, such as when external events prevented you from completing the rollover by the 60-day rollover deadline. To apply for a waiver, you must file a private letter ruling request with the IRS. Private letter ruling requests require the payment of a nonrefundable user fee. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

If your payment includes employer stock that you do not roll over

If you do not do a rollover, you can apply a special rule to payments of employer stock (or other employer securities) that are either attributable to after-tax contributions or paid in a lump sum

after separation from service (or after age 59½, disability, or the participant's death). Under the special rule, the net unrealized appreciation on the stock will not be taxed when distributed from the Plan and will be taxed at capital gain rates when you sell the stock. Net unrealized appreciation is generally the increase in the value of employer stock after it was acquired by the Plan. If you do a rollover for a payment that includes employer stock (for example, by selling the stock and rolling over the proceeds within 60 days of the payment), the special rule relating to the distributed employer stock will not apply to any subsequent payments from the IRA or employer plan. The Plan administrator can tell you the amount of any net unrealized appreciation.

If you have an outstanding loan that is being offset

If you have an outstanding loan from the Plan, your Plan benefit may be offset by the amount of the loan, typically when your employment ends. The loan offset amount is treated as a distribution to you at the time of the offset and will be taxed (including the 10% additional income tax on early distributions, unless an exception applies) unless you do a 60-day rollover in the amount of the loan offset to an IRA or employer plan.

If you were born on or before January 1, 1936

If you were born on or before January 1, 1936 and receive a lump sum distribution that you do not roll over, special rules for calculating the amount of the tax on the payment might apply to you. For more information, see IRS Publication 575, Pension and Annuity Income.

If your payment is from a governmental section 457(b) plan

If the Plan is a governmental section 457(b) plan, the same rules described elsewhere in this notice generally apply, allowing you to roll over the payment to an IRA or an employer plan that accepts rollovers. One difference is that, if you do not do a rollover, you will not have to pay the 10% additional income tax on early distributions from the Plan even if you are under age 59½ (unless the payment is from a separate account holding rollover contributions that were made to the Plan from a tax-qualified plan, a section 403(b) plan, or an IRA). However, if you do a rollover to an IRA or to an employer plan that is not a governmental section 457(b) plan, a later distribution made before age 59½ will be subject to the 10% additional income tax on early distributions (unless an exception applies). Other differences are that you cannot do a rollover if the payment is due to an "unforeseeable emergency" and the special rules under "If your payment includes employer stock that you do not roll over" and "If you were born on or before January 1, 1936" do not apply.

If you are an eligible retired public safety officer and your pension payment is used to pay for health coverage or qualified long-term care insurance

If the Plan is a governmental plan, you retired as a public safety officer, and your retirement was by reason of disability or was after normal retirement age, you can exclude from your taxable income plan payments paid directly as premiums to an accident or health plan (or a qualified long-term care insurance contract) that your employer maintains for you, your spouse,

or your dependents, up to a maximum of $3,000 annually. For this purpose, a public safety officer is a law enforcement officer, firefighter, chaplain, or member of a rescue squad or ambulance crew.

If you roll over your payment to a Roth IRA

You can roll over a payment from the Plan made before January 1, 2010 to a Roth IRA only if your modified adjusted gross income is not more than $100,000 for the year the payment is made to you and, if married, you file a joint return. These limitations do not apply to payments made to you from the Plan after 2009. If you wish to roll over the payment to a Roth IRA, but you are not eligible to do a rollover to a Roth IRA until after 2009, you can do a rollover to a traditional IRA and then, after 2009, elect to convert the traditional IRA into a Roth IRA.

If you roll over the payment to a Roth IRA, a special rule applies under which the amount of the payment rolled over (reduced by any after-tax amounts) will be taxed. However, the 10% additional income tax on early distributions will not apply (unless you take the amount rolled over out of the Roth IRA within 5 years, counting from January 1 of the year of the rollover). For payments from the Plan during 2010 that are rolled over to a Roth IRA, the taxable amount can be spread over a 2-year period starting in 2011.

If you roll over the payment to a Roth IRA, later payments from the Roth IRA that are qualified distributions will not be taxed (including earnings after the rollover). A qualified distribution from a Roth IRA is a payment made after you are age 59½ (or after your death or disability, or as a qualified first-time homebuyer distribution of up to $10,000) and after you have had a Roth IRA for at least 5 years. In applying this 5-year rule, you count from January 1 of the year for which your first contribution was made to a Roth IRA. Payments from the Roth IRA that are not qualified distributions will be taxed to the extent of earnings after the rollover, including the 10% additional income tax on early distributions (unless an exception applies). You do not have to take required minimum distributions from a Roth IRA during your lifetime. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

You cannot roll over a payment from the Plan to a designated Roth account in an employer plan.

If you are not a plan participant

Payments after death of the participant. If you receive a distribution after the participant's death that you do not roll over, the distribution will generally be taxed in the same manner described elsewhere in this notice. However, the 10% additional income tax on early distributions and the special rules for public safety officers do not apply, and the special rule described under the section "If you were born on or before January 1, 1936" applies only if the participant was born on or before January 1, 1936.

> **If you are a surviving spouse.** If you receive a payment from the Plan as the surviving spouse of a deceased participant, you have the same rollover options that the participant would have had, as described elsewhere in this notice. In addition, if you choose to do a rollover to an IRA, you may treat the IRA as your own or as an inherited IRA.

An IRA you treat as your own is treated like any other IRA of yours, so that payments made to you before you are age 59½ will be subject to the 10% additional income tax on early distributions (unless an exception applies) and required minimum distributions from your IRA do not have to start until after you are age 70½.

If you treat the IRA as an inherited IRA, payments from the IRA will not be subject to the 10% additional income tax on early distributions. However, if the participant had started taking required minimum distributions, you will have to receive required minimum distributions from the inherited IRA. If the participant had not started taking required minimum distributions from the Plan, you will not have to start receiving required minimum distributions from the inherited IRA until the year the participant would have been age 70½.

If you are a surviving beneficiary other than a spouse. If you receive a payment from the Plan because of the participant's death and you are a designated beneficiary other than a surviving spouse, the only rollover option you have is to do a direct rollover to an inherited IRA. Payments from the inherited IRA will not be subject to the 10% additional income tax on early distributions. You will have to receive required minimum distributions from the inherited IRA.

Payments under a qualified domestic relations order. If you are the spouse or former spouse of the participant who receives a payment from the Plan under a qualified domestic relations order (QDRO), you generally have the same options the participant would have (for example, you may roll over the payment to your own IRA or an eligible employer plan that will accept it). Payments under the QDRO will not be subject to the 10% additional income tax on early distributions.

If you are a nonresident alien

If you are a nonresident alien and you do not do a direct rollover to a U.S. IRA or U.S. employer plan, instead of withholding 20%, the Plan is generally required to withhold 30% of the payment for federal income taxes. If the amount withheld exceeds the amount of tax you owe (as may happen if you do a 60-day rollover), you may request an income tax refund by filing Form 1040NR and attaching your Form 1042-S. See Form W-8BEN for claiming that you are entitled to a reduced rate of withholding under an income tax treaty. For more information, see also IRS Publication 519, U.S. Tax Guide for Aliens, and IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Other special rules

If a payment is one in a series of payments for less than 10 years, your choice whether to make a direct rollover will apply to all later payments in the series (unless you make a different choice for later payments).

If your payments for the year are less than $200 (not including payments from a designated Roth account in the Plan), the Plan is not required to allow you to do a direct rollover and is not required to withhold for federal income taxes. However, you may do a 60-day rollover.

Unless you elect otherwise, a mandatory cashout of more than $1,000 (not including payments from a designated Roth account in the Plan) will be directly rolled over to an IRA chosen by the Plan administrator or the payor. A mandatory cashout is a payment from a plan to a participant made before age 62 (or normal retirement age, if later) and without consent, where the participant's benefit does not exceed $5,000 (not including any amounts held under the plan as a result of a prior rollover made to the plan).

You may have special rollover rights if you recently served in the U.S. Armed Forces. For more information, see IRS Publication 3, Armed Forces' Tax Guide.

FOR MORE INFORMATION

You may wish to consult with the Plan administrator or payor, or a professional tax advisor, before taking a payment from the Plan. Also, you can find more detailed information on the federal tax treatment of payments from employer plans in: IRS Publication 575, Pension and Annuity Income; IRS Publication 590, Individual Retirement Arrangements (IRAs); and IRS Publication 571, Tax-Sheltered Annuity Plans (403(b) Plans). These publications are available from a local IRS office, on the web at www.irs.gov, or by calling 1-800-TAX-FORM.

* * *

YOUR ROLLOVER OPTIONS

You are receiving this notice because all or a portion of a payment you are receiving from the [INSERT NAME OF PLAN] (the "Plan") is eligible to be rolled over to a Roth IRA or designated Roth account in an employer plan. This notice is intended to help you decide whether to do a rollover.

This notice describes the rollover rules that apply to payments from the Plan that are from a designated Roth account. If you also receive a payment from the Plan that is not from a designated Roth account, you will be provided a different notice for that payment, and the Plan administrator or the payor will tell you the amount that is being paid from each account.

Rules that apply to most payments from a designated Roth account are described in the "General Information About Rollovers" section. Special rules that only apply in certain circumstances are described in the "Special Rules and Options" section.

GENERAL INFORMATION ABOUT ROLLOVERS

How can a rollover affect my taxes?

After-tax contributions included in a payment from a designated Roth account are not taxed, but earnings might be taxed. The tax treatment of earnings included in the payment depends on whether the payment is a qualified distribution. If a payment is only part of your designated Roth account, the payment will include an allocable portion of the earnings in your designated Roth account.

If the payment from the Plan is not a qualified distribution and you do not do a rollover to a Roth IRA or a designated Roth account in an employer plan, you will be taxed on the earnings in the payment. If you are under age 59½, a 10% additional income tax on early distributions will also apply to the earnings (unless an exception applies). However, if you do a rollover, you will not have to pay taxes currently on the earnings and you will not have to pay taxes later on payments that are qualified distributions.

If the payment from the Plan is a qualified distribution, you will not be taxed on any part of the payment even if you do not do a rollover. If you do a rollover, you will not be taxed on the amount you roll over and any earnings on the amount you roll over will not be taxed if paid later in a qualified distribution.

A qualified distribution from a designated Roth account in the Plan is a payment made after you are age 59½ (or after your death or disability) and after you have had a designated Roth account in the Plan for at least 5 years. In applying the 5-year rule, you count from January 1 of the year your first contribution was made to the designated Roth account. However, if you did a direct rollover to a designated Roth account in the Plan

from a designated Roth account in another employer plan, your participation will count from January 1 of the year your first contribution was made to the designated Roth account in the Plan or, if earlier, to the designated Roth account in the other employer plan.

Where may I roll over the payment?

You may roll over the payment to either a Roth IRA (a Roth individual retirement account or Roth individual retirement annuity) or a designated Roth account in an employer plan (a tax-qualified plan or section 403(b) plan) that will accept the rollover. The rules of the Roth IRA or employer plan that holds the rollover will determine your investment options, fees, and rights to payment from the Roth IRA or employer plan (for example, no spousal consent rules apply to Roth IRAs and Roth IRAs may not provide loans). Further, the amount rolled over will become subject to the tax rules that apply to the Roth IRA or the designated Roth account in the employer plan. In general, these tax rules are similar to those described elsewhere in this notice, but differences include:

- If you do a rollover to a Roth IRA, all of your Roth IRAs will be considered for purposes of determining whether you have satisfied the 5-year rule (counting from January 1 of the year for which your first contribution was made to any of your Roth IRAs).
- If you do a rollover to a Roth IRA, you will not be required to take a distribution from the Roth IRA during your lifetime and you must keep track of the aggregate amount of the after-tax contributions in all of your Roth IRAs (in order to determine your taxable income for later Roth IRA payments that are not qualified distributions).
- Eligible rollover distributions from a Roth IRA can only be rolled over to another Roth IRA.

How do I do a rollover?

There are two ways to do a rollover. You can either do a direct rollover or a 60-day rollover.

If you do a direct rollover, the Plan will make the payment directly to your Roth IRA or designated Roth account in an employer plan. You should contact the Roth IRA sponsor or the administrator of the employer plan for information on how to do a direct rollover.

If you do not do a direct rollover, you may still do a rollover by making a deposit within 60 days into a Roth IRA, whether the payment is a qualified or nonqualified distribution. In addition, you can do a rollover by making a deposit within 60 days into a designated Roth account in an employer plan if the payment is a nonqualified distribution and the rollover does not exceed the amount of the earnings in the payment. You cannot do a 60-day rollover to an employer plan of any part of a qualified distribution. If you receive a distribution that is a nonqualified distribution and you do not roll over an amount at least equal to the earnings allocable to the distribution, you will be taxed on the amount of

those earnings not rolled over, including the 10% additional income tax on early distributions if you are under age 59½ (unless an exception applies).

If you do a direct rollover of only a portion of the amount paid from the Plan and a portion is paid to you, each of the payments will include an allocable portion of the earnings in your designated Roth account.

If you do not do a direct rollover and the payment is not a qualified distribution, the Plan is required to withhold 20% of the earnings for federal income taxes (up to the amount of cash and property received other than employer stock). This means that, in order to roll over the entire payment in a 60-day rollover to a Roth IRA, you must use other funds to make up for the 20% withheld.

How much may I roll over?

If you wish to do a rollover, you may roll over all or part of the amount eligible for rollover. Any payment from the Plan is eligible for rollover, except:

- Certain payments spread over a period of at least 10 years or over your life or life expectancy (or the lives or joint life expectancy of you and your beneficiary)
- Required minimum distributions after age 70½ (or after death)
- Hardship distributions
- ESOP dividends
- Corrective distributions of contributions that exceed tax law limitations
- Loans treated as deemed distributions (for example, loans in default due to missed payments before your employment ends)
- Cost of life insurance paid by the Plan
- Contributions made under special automatic enrollment rules that are withdrawn pursuant to your request within 90 days of enrollment
- Amounts treated as distributed because of a prohibited allocation of S corporation stock under an ESOP (also, there will generally be adverse tax consequences if S corporation stock is held by an IRA).

The Plan administrator or the payor can tell you what portion of a payment is eligible for rollover.

If I don't do a rollover, will I have to pay the 10% additional income tax on early distributions?

If a payment is not a qualified distribution and you are under age 59½, you will have to pay the 10% additional income tax on early distributions with respect to the earnings allocated to the payment that you do not roll over (including amounts withheld for income tax), unless one of the exceptions listed below applies. This tax is in addition to the regular income tax on the earnings not rolled over.

The 10% additional income tax does not apply to the following payments from the Plan:

- Payments made after you separate from service if you will be at least age 55 in the year of the separation
- Payments that start after you separate from service if paid at least annually in equal or close to equal amounts over your life or life expectancy (or the lives or joint life expectancy of you and your beneficiary)
- Payments made due to disability
- Payments after your death
- Payments of ESOP dividends
- Corrective distributions of contributions that exceed tax law limitations
- Cost of life insurance paid by the Plan
- Contributions made under special automatic enrollment rules that are withdrawn pursuant to your request within 90 days of enrollment
- Payments made directly to the government to satisfy a federal tax levy
- Payments made under a qualified domestic relations order (QDRO)
- Payments up to the amount of your deductible medical expenses
- Certain payments made while you are on active duty if you were a member of a reserve component called to duty after September 11, 2001 for more than 179 days
- Payments of certain automatic enrollment contributions requested to be withdrawn within 90 days of the first contribution.

If I do a rollover to a Roth IRA, will the 10% additional income tax apply to early distributions from the IRA?

If you receive a payment from a Roth IRA when you are under age 59½, you will have to pay the 10% additional income tax on early distributions on the earnings paid from the Roth IRA, unless an exception applies or the payment is a qualified distribution. In general, the exceptions to the 10% additional income tax for early distributions from a Roth IRA listed above are the same as the exceptions for early distributions from a plan. However, there are a few differences for payments from a Roth IRA, including:

- There is no special exception for payments after separation from service.
- The exception for qualified domestic relations orders (QDROs) does not apply (although a special rule applies under which, as part of a divorce or separation agreement, a tax-free transfer may be made directly to a Roth IRA of a spouse or former spouse).
- The exception for payments made at least annually in equal or close to equal amounts over a specified period applies without regard to whether you have had a separation from service.
- There are additional exceptions for (1) payments for qualified higher education expenses, (2) payments up to $10,000 used in a qualified first-time home purchase, and (3) payments after you have received unemployment compensation for 12 consecutive weeks (or would have been eligible to receive unemployment compensation but for self-employed status).

Will I owe State income taxes?

This notice does not describe any State or local income tax rules (including withholding rules).

SPECIAL RULES AND OPTIONS

If you miss the 60-day rollover deadline

Generally, the 60-day rollover deadline cannot be extended. However, the IRS has the limited authority to waive the deadline under certain extraordinary circumstances, such as when external events prevented you from completing the rollover by the 60-day rollover deadline. To apply for a waiver, you must file a private letter ruling request with the IRS. Private letter ruling requests require the payment of a nonrefundable user fee. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

If your payment includes employer stock that you do not roll over

If you receive a payment that is not a qualified distribution and you do not roll it over, you can apply a special rule to payments of employer stock (or other employer securities) that are paid in a lump sum after separation from service (or after age 59½, disability, or the participant's death). Under the special rule, the net unrealized appreciation on the stock included in the earnings in the payment will not be taxed when distributed to you from the Plan and will be taxed at capital gain rates when you sell the stock. If you do a rollover to a Roth IRA for a nonqualified distribution that includes employer stock (for example, by selling the stock and rolling over the proceeds within 60 days of the distribution), you will not have any taxable income and the special rule relating to the distributed employer stock will not apply to any subsequent payments from the Roth IRA or employer plan. Net unrealized appreciation is generally the increase in the value of the employer stock after it was acquired by the Plan. The Plan administrator can tell you the amount of any net unrealized appreciation.

If you receive a payment that is a qualified distribution that includes employer stock and you do not roll it over, your basis in the stock (used to determine gain or loss when you later sell the stock) will equal the fair market value of the stock at the time of the payment from the Plan.

If you have an outstanding loan that is being offset

If you have an outstanding loan from the Plan, your Plan benefit may be offset by the amount of the loan, typically when your employment ends. The loan offset amount is treated as a distribution to you at the time of the offset and, if the distribution is a nonqualified distribution, the earnings in the loan offset will be taxed (including the 10% additional income tax on early distributions, unless an exception applies) unless you do a

60-day rollover in the amount of the earnings in the loan offset to a Roth IRA or designated Roth account in an employer plan.

If you receive a nonqualified distribution and you were born on or before January 1, 1936

If you were born on or before January 1, 1936, and receive a lump sum distribution that is not a qualified distribution and that you do not roll over, special rules for calculating the amount of the tax on the earnings in the payment might apply to you. For more information, see IRS Publication 575, Pension and Annuity Income.

If you receive a nonqualified distribution, are an eligible retired public safety officer, and your pension payment is used to pay for health coverage or qualified long-term care insurance

If the Plan is a governmental plan, you retired as a public safety officer, and your retirement was by reason of disability or was after normal retirement age, you can exclude from your taxable income nonqualified distributions paid directly as premiums to an accident or health plan (or a qualified long-term care insurance contract) that your employer maintains for you, your spouse, or your dependents, up to a maximum of $3,000 annually. For this purpose, a public safety officer is a law enforcement officer, firefighter, chaplain, or member of a rescue squad or ambulance crew.

If you are not a plan participant

Payments after death of the participant. If you receive a distribution after the participant's death that you do not roll over, the distribution will generally be taxed in the same manner described elsewhere in this notice. However, whether the payment is a qualified distribution generally depends on when the participant first made a contribution to the designated Roth account in the Plan. Also, the 10% additional income tax on early distributions and the special rules for public safety officers do not apply, and the special rule described under the section "If you receive a nonqualified distribution and you were born on or before January 1, 1936" applies only if the participant was born on or before January 1, 1936.

> **If you are a surviving spouse.** If you receive a payment from the Plan as the surviving spouse of a deceased participant, you have the same rollover options that the participant would have had, as described elsewhere in this notice. In addition, if you choose to do a rollover to a Roth IRA, you may treat the Roth IRA as your own or as an inherited Roth IRA.
>
> A Roth IRA you treat as your own is treated like any other Roth IRA of yours, so that you will not have to receive any required minimum distributions during your lifetime and earnings paid to you in a nonqualified distribution before you are age 59½ will be subject to the 10% additional income tax on early distributions (unless an exception applies).

If you treat the Roth IRA as an inherited Roth IRA, payments from the Roth IRA will not be subject to the 10% additional income tax on early distributions. An inherited Roth IRA is subject to required minimum distributions. If the participant had started taking required minimum distributions from the Plan, you will have to receive required minimum distributions from the inherited Roth IRA. If the participant had not started taking required minimum distributions, you will not have to start receiving required minimum distributions from the inherited Roth IRA until the year the participant would have been age 70½.

If you are a surviving beneficiary other than a spouse. If you receive a payment from the Plan because of the participant's death and you are a designated beneficiary other than a surviving spouse, the only rollover option you have is to do a direct rollover to an inherited Roth IRA. Payments from the inherited Roth IRA, even if made in a nonqualified distribution, will not be subject to the 10% additional income tax on early distributions. You will have to receive required minimum distributions from the inherited Roth IRA.

Payments under a qualified domestic relations order. If you are the spouse or a former spouse of the participant who receives a payment from the Plan under a qualified domestic relations order (QDRO), you generally have the same options the participant would have (for example, you may roll over the payment as described in this notice).

If you are a nonresident alien

If you are a nonresident alien and you do not do a direct rollover to a U.S. IRA or U.S. employer plan, instead of withholding 20%, the Plan is generally required to withhold 30% of the payment for federal income taxes. If the amount withheld exceeds the amount of tax you owe (as may happen if you do a 60-day rollover), you may request an income tax refund by filing Form 1040NR and attaching your Form 1042-S. See Form W-8BEN for claiming that you are entitled to a reduced rate of withholding under an income tax treaty. For more information, see also IRS Publication 519, U.S. Tax Guide for Aliens, and IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Other special rules

If a payment is one in a series of payments for less than 10 years, your choice whether to make a direct rollover will apply to all later payments in the series (unless you make a different choice for later payments).

If your payments for the year (only including payments from the designated Roth account in the Plan) are less than $200, the Plan is not required to allow you to do a direct rollover and is not required to withhold for federal income taxes. However, you can do a 60-day rollover.

Unless you elect otherwise, a mandatory cashout from the designated Roth account in the Plan of more than $1,000 will be directly rolled over to a Roth IRA chosen by the Plan administrator or the payor. A mandatory cashout is a payment from a plan to a participant made before age 62 (or normal retirement age, if later) and without consent, where the participant's benefit does not exceed $5,000 (not including any amounts held under the plan as a result of a prior rollover made to the plan).

You may have special rollover rights if you recently served in the U.S. Armed Forces. For more information, see IRS Publication 3, Armed Forces' Tax Guide.

FOR MORE INFORMATION

You may wish to consult with the Plan administrator or payor, or a professional tax advisor, before taking a payment from the Plan. Also, you can find more detailed information on the federal tax treatment of payments from employer plans in: IRS Publication 575, Pension and Annuity Income; IRS Publication 590, Individual Retirement Arrangements (IRAs); and IRS Publication 571, Tax-Sheltered Annuity Plans (403(b) Plans). These publications are available from a local IRS office, on the web at www.irs.gov, or by calling 1-800-TAX-FORM.

GREAT LAKES RESTORATION INITIATIVE

ACTION PLAN

FY2010 - FY2014

Council on Environmental Quality
Department of Agriculture
Department of Commerce
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of Interior
Department of State
Department of the Army
Department of Transportation
Environmental Protection Agency

Draft

September, 2009

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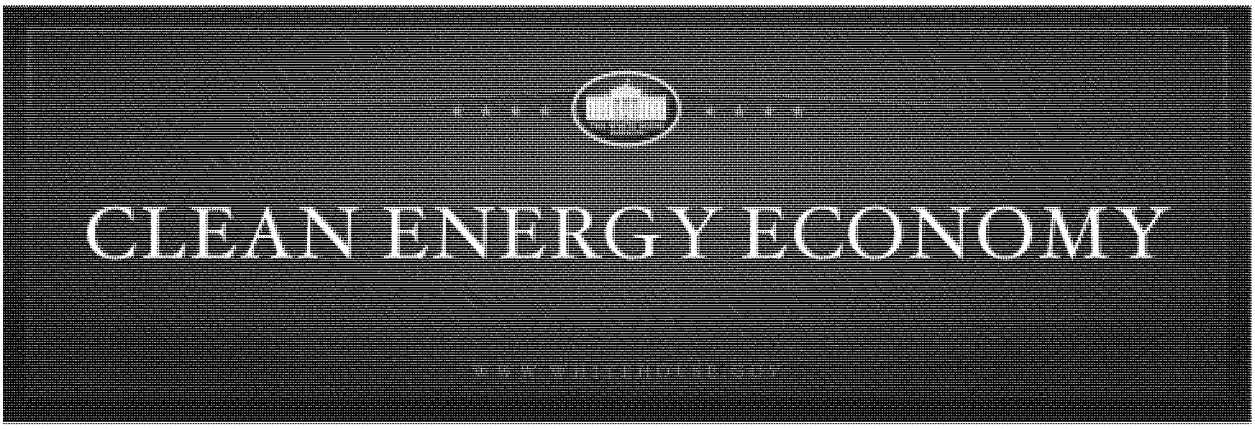


Green Cabinet Lunch

Briefing Packet

September 9th, 2009

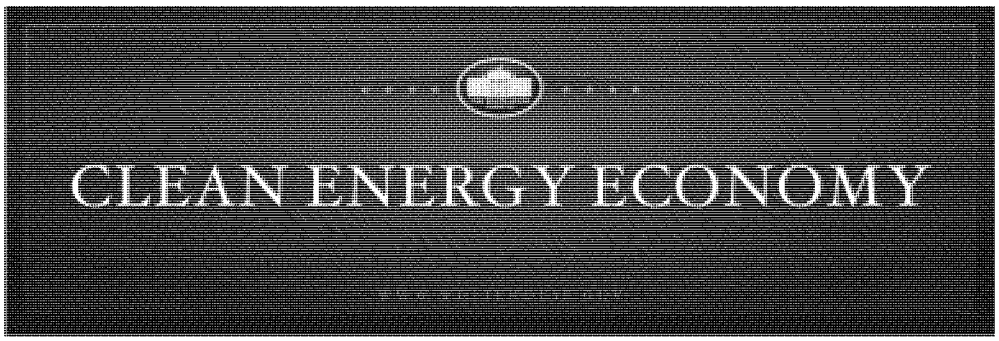
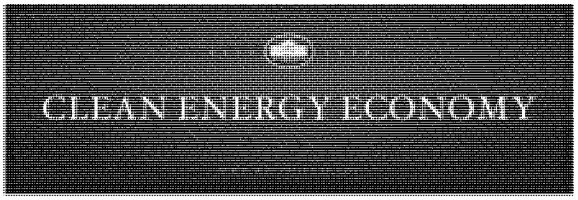


Table of Contents:



To: Energy Cabinet members

From: Energy and Climate Working Group

Date: September 9, 2009

Re: Summary of Energy Cabinet activities in August and September to organize support for energy reform

Thank you for all of your efforts in helping produce an extremely successful month of energy and climate activities in August and early September. With valuable support from your agency, the Energy and Climate Working Group has organized various activities in the last month to continue developing momentum for comprehensive energy and climate legislation. The activities included: regional energy forums with governors, energy briefings with hundreds of Midwest stakeholders at the White House, conference calls with over 100 mayors, and several Cabinet member energy events in targeted states. Each coordinated effort is described in detail below.

1. Governors Regional Energy Forums in Colorado and Michigan with hundreds of stakeholders.

   We have completed two Governors Regional Energy Forums in Colorado and Michigan. The next scheduled forum is in Pennsylvania on September 17 with Governor Rendell and Secretary Chu; in addition, Governor Kaine has committed to a forum in Virginia that we plan to conduct in the next month.

   Fort Collins, CO (Thursday, 8/27): Secretary Salazar and Chair Sutley

   The *Denver Post* noted: "The packed audience included farmers, elected officials, energy industry representatives and students from across the city." Another local paper added: "'Salazar, lawmakers and environmental officials bring energy to public discussion': In the first of four national forums on the 'New Energy Economy,' Interior Secretary Ken Salazar, Gov. Bill Ritter and Rep. Betsy Markey, along with others, held an open forum to give residents an opportunity to chime in on that new, proposed economy."

Saginaw, MI (Wednesday, 9/2): Secretary Locke, Assistant Secretary Sandalow and Ed Montgomery

The *Saginaw News* reported, "Clean energy will power the 21st century economy and create jobs if the nation doesn't miss the opportunity to harness the potential for alternative energies, high ranking leaders said Wednesday in Saginaw. Michigan Gov. Jennifer M. Granholm, Wisconsin Gov. Jim Doyle along with U.S. Commerce Secretary Gary Locke, auto recovery czar Ed Montgomery and David Sandalow, assistant secretary of energy for policy and international affairs, pointed to the high growth industry as an economic engine for Michigan and the nation in a White House-sponsored forum Wednesday at The Dow Event Center."

2. White House Regional Stakeholders Briefing with over 100 stakeholders.

On August 24, Secretaries Vilsack and Locke and Chair Sutley hosted a briefing in EEOB with over 100 energy stakeholders from about fifteen states. The briefing included breakout sessions on agriculture, manufacturing and coal with senior administration officials. The *Wall Street Journal, AP,* and *Reuters*, also covered the event.

We are planning several more stakeholders briefings at the White House in coordination with your agency.

3. Conference calls with over 100 local mayors in 17 targeted states.

On August 27, we concluded a series of conference calls where over 100 local mayors in 17 targeted states discussed energy and climate legislation and mechanisms to organize public support with senior officials from the White House and Energy Department. We plan to convene similar calls in the future with targeted constituencies such as veterans, faith leaders, and sportsmen.

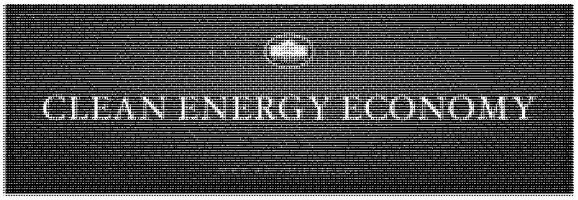
4. Examples of Energy Cabinet travel in August

We are extremely grateful that you traveled to many states in the last month where you delivered the President's message on energy and climate reform. In addition to the governor regional energy forums, some examples include:

- On August 3, Secretary Chu traveled to Rochester, Minnesota, where he visited an IBEW training facility and discuss the importance of clean jobs as part of the economy recovery effort. Secretary Solis was in WV that day for a mining event, but had private discussions about energy reform with Members of the delegation.

- On August 4, Secretary Salazar toured a solar plant outside of Denver, CO.
- On August 5, the following Cabinet members hosted events amplifying the President's announcement on batteries: Secretary Chu in Charlotte, NC; Administrator Jackson in Tampa, FL; Secretary Locke in Kansas City, MO; and Deputy Secretary Pocari in Lyon Station, PA.
- On August 6, Secretary Chu delivered the keynote address at an energy forum hosted by Congressman Ed Markey in Boston.
- On August 9, Secretary Solis joined Senator Harkin in Iowa at a groundbreaking for a facility that will train youth for clean energy jobs among other items.
- On August 10, Secretaries Chu and Solis attended Majority Leader Reid's energy summit in Nevada. Secretary Vilsack delivered the keynote at a BioChar conference in Colorado on that day; moreover, he hosted a roundtable with Senator Bennett that focused on ag/energy issues.
- In Mid-August, Secretary Salazar spent significant time discussing energy reform with Senator Baucus at a water conference in Montana.
- On August 12, Secretaries Vilsack, Chu, and Donovan toured a wind energy farm in Alaska with Senator Begich as part of the rural tour.
- On August 31, Secretary Chu traveled to New Mexico where he hosted an energy roundtable.
- Administrator Jackson spoke at a Blue-Green Alliance energy rally in Indiana on September 2.

Many of those events included private greets with energy stakeholders in coordination with Members of Congress.



Energy Events Calendar (Fall 2009)

Calendar of U.S. Energy and Climate Events (Fall & Winter 2009): Please find below a list of some upcoming events on climate change and energy reform this fall and winter. Some of these events will be attended by senior Administration officials, though most are hosted and attended by outside groups. The volume of events is illustrative of the mounting discussion around clean energy reform in America. Please do not hesitate to follow up with the Office of Energy and Climate Change with questions regarding any of the events listed below.

*Note that events bolded and italicized are events with Green Cabinet Member attendance; events italicized are scheduled at the White House; and events in plain text are hosted by outside groups.

September 2009

9/1	***EPA Blue-Green Alliance Event***
9/1	***DOE Pryor Event***
9/1	***HUD Green Zone Visit***
9/2	***White House Michigan Governor Forum***
9/1-9/14	Repower America's 22 Cities Tour
9/2	Michigan Clean Energy Jobs Rally
9/3	***DOE New Mexico for Clean Energy Summit***
9/8	Partnership for a Secure America event on Energy and National Security
9/10	***White House Breifing with Operation Free***
9/14	***White House National Farmers Union Briefing***
9/15	***White House Virginia Governor Forum***
9/17	***White House Pennsylvania Governor Forum***
9/17-9/18	Greening the Supply Chain
9/18	***HUD Sustainability Tour***
9/21	*Fly-In Meeting at the White House: Sports (Fishers and Hunters)*
9/22-9/25	Clinton Global Initiative Annual Meeting

9/23-9/24	National Energy Summit, CNBC and Council on Competitiveness
9/24 -9/25	National Venture Capital Assocation Meeting
9/28-9/30	Renewable Energy Finance Forum-West

October 2009

10/7	*Fly-In Meeting at the White House: Business Lobby Day (CEN, CERES, USCAP)*
10/8	***White House Clean Economy Network Breifing***
10/13	***OSTP Energy Event***
10/14-10/16	Association of Fish and Wildlife Agencies Annual Meeting
10/15- 10/16	Sustainable Community Development Group Capitol Hill Summit
10/20	*Fly-In Meeting at the White House: Evangelical Activists*

November 2009- on

All Month	American Council On Renewable Energy wind and solar industry meetings
11/18 – 11/19	***Governors' Global Climate Summit (CA)***
11/19-20	Phase II of Renewable Energy (ACORE) on Capitol Hill
1/20/-1/22	10th National Conference on Science, Policy, and the Environment: The New Green Economy

International Diplomatic Calendar (2009): This is a list of major upcoming international events, many of which will include an energy and climate change component. These events are hosted by heads of government and international organizations.

July 2009

6/30-7/3	Greenland Dialogue 2009, Iluliassat, Greenland
7/8-7/10	G-8 Summit, La Maddalena, Italy
7/9	Major Economies Forum, La Maddalena, Italy

August 2009

8/9-8/10	North American Leaders Summit: Energy Deliverables, Guadalajara, Mexico
8/10-8/14	UNFCCC Intersessional Informal Consultations, Bonn, Germany
8/31-9/4	World Climate Conference Three, Geneva, Switzerland

September 2009

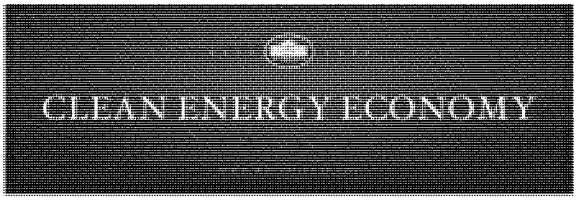
9/17-9/18	Major Economies Forum, Washington, DC
9/21-9/25	UN General Assembly Climate Summit, New York, NY
9/24-9/25	G-20 Summit, Pittsburgh, PA
9/28-10/9	UNFCCC Intersessional Meeting, Ninth session of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) and Seventh Session of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA), Bangkok, Thailand.

November 2009

11/2-11/6	UNFCCC Intersessional Meeting, Resumed ninth session of the AWG-KP and resumed seventh session of the AWG-LCA, Barcelona, Spain
11/12-11/14	APEC CEO Summit 2009. Singapore
Date TBC	China State Visit
Date TBC	India State Visit

December 2009

12/7-12/18	UNFCCC COP 15, Copenhagen, Denmark



Press Outreach

Our press outreach efforts do not begin and end with events in media markets. We are working hard to coordinate with your communications and public affairs staff to generate ongoing press coverage that do not require travel through editorials, op-eds, letters to the editor, radio time and online outreach. Please see the example enclosed from USDA where they send a memo and report to the editorial boards of all of the weekly papers in targeted states.

Please also note, as part of the ongoing press outreach effort, agencies are also involved in organizing and creating:

- Press clips, which include news stories and op-eds.
- Letters to the editor and editorials are distributed to your offices daily.
- If it is appropriate for a response to come from your agency, we welcome your efforts.

Please be creative so we can reach new audiences. Broadening traditional angles is key to the success of our outreach (example – Secretary Chu's Facebook account).

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

To: Editorial Board Members
From: Tom Vilsack, Secretary, USDA
Re: Climate Change Legislation Economic Analysis
Date: August 27, 2009

The comprehensive energy and climate change legislation that is moving through U.S. Congress is a central part of the Obama administration's efforts to build a 21st century economy. It is a significant piece of legislation that deserves a serious and healthy debate at the national and local levels. To aid in that discussion, I want to provide you and your readers with as much information as possible to make informed decisions about how this legislation will affect your community.

America's farmers are justifiably concerned about how the climate change bill currently being debated in Congress will impact their bottom line. In response to this concern, top USDA economists have prepared an analysis of the costs and benefits to American agriculture of the Waxman-Markey bill that passed the House of Representatives.

The centerpiece of the legislation is the creation of a market that will offer opportunities for agriculture, forestry and other sectors to sell offsets to companies that emit greenhouse gases that are causing climate change. Using conservative estimates of the benefits of the offsets market and the ability of farmers to respond to climate legislation, USDA's economists found that the opportunities for farmers and ranchers will outweigh the potential costs. This is particularly true over the long term. The benefits to the agriculture sector are expected to grow to $15-20 billion annually in 2040-50.

There is no doubt that climate change legislation will bring changes to our agricultural and rural economies. New markets for biofuels and bio-energy and for carbon offsets will give rural America the opportunity to lead efforts to create clean energy jobs, break our dependence on foreign oil, and combat the effects of global warming.

This is the sort of leadership role rural America is ready to take. And our economic and environmental future depends on it.

I hope you're able to take some time to read our analysis of the climate change legislation which I have attached to this memo. Please also see the examples of how the bill would affect 4 typical farm operations across this nation. And know that you should not hesitate to reach out to the USDA press office if you have further questions about our findings. They can be reached at 202-720-4623.

Thank you for your consideration.

What would the Waxman-Markey climate change and energy legislation that passed the U.S. House of Representatives mean for an individual farmer?

USDA's analyses tell us the local story of how the energy and climate change legislation passed by the U.S. House of Representatives will affect individual producers of commodity crops all over the country. Their experience will vary by geography, the carbon sequestration rate of the soil they farm, the crops they grow and the ease of adopting no-till practices -- but all of the farmers whose operations we look at in the examples below stand to improve their bottom line under the legislation. Some might also see new income opportunities from markets for biomass-based renewable energy.

Iowa Corn/Soybean Farmer
An Iowa farmer growing soybeans and corn might see an increase of $1.00 per acre in costs of production by 2020 due to higher fuel prices. The farmer also will have some one-time costs to convert to no-till. But, based on a soil carbon sequestration rate of 0.6 tons per acre and a carbon price of $16 per ton, a producer could mitigate those expenses by adopting no-till practices and earning an additional $9.60 per acre, more than making up for the increased costs.

So, this corn and soybean farmer does better under the House passed climate legislation than without it. And, it's quite possible that this farmer could do even better if technologies and markets progress in such a way that allows for the sale of corn stover to make cellulosic ethanol.

Southeast Cotton Farmer
A cotton farmer in the South East might see an increase of $1.76 per acre in costs of production by 2020 due to higher fuel prices. The farmer also will have some one-time costs to convert to no-till. But, based on a soil carbon sequestration rate of 0.5 tons per acre and a carbon price of $16 per ton, a producer could mitigate those expenses by adopting no-till practices and earning an additional $8.00 per acre, more than making up for the increased costs.

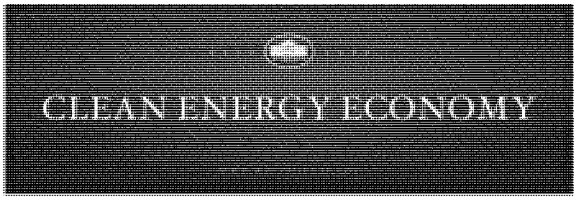
So, this cotton farmer does better under the House passed climate legislation than without it.

Northern Minnesota Corn Farmer
A Northern Minnesota farmer growing soybeans and corn might see an increase of $1.44 per acre in costs of production by 2020 due to higher fuel prices. The farmer also will have some one-time costs to convert to no-till. But, based on a soil carbon sequestration rate of 0.4 tons per acre and a carbon price of $16 per ton, a producer could mitigate those expenses by adopting no-till practices and earning an additional $6.40 per acre, more than making up for the increased costs.

So, this corn farmer does better under the House passed climate legislation than without it. And, it's quite possible that this farmer could do even better if technologies and markets progress in such a way that allows for the sale of corn stover to make cellulosic ethanol.

Northern Plains Wheat Farmer
A Northern Plains wheat producer might see an increase of $.80 per acre in costs of production by 2020 due to higher fuel prices. The farmer also will have some one-time costs to convert to no-till. But, based on a soil carbon sequestration rate of 0.4 tons per acre and a carbon price of $16 per ton, a producer could mitigate those expenses by adopting no-till practices and earning an additional $6.40 per acre, more than making up for the increased costs.

So, this wheat farmer does better under the House passed climate legislation than without it. And, it's quite possible that this wheat farmer could do even better if technologies and markets progress in such a way that allows for the sale of wheat straw to make cellulosic ethanol.



Press Clips

Following up on July 7, 2009 EPW Testimony with Op-Eds

THE WHITE HOUSE
Office of the Press Secretary
FOR IMMEDIATE RELEASE
July 24, 2009

Cabinet Members Publish Energy Op-Eds in Regional Papers

WASHINGTON – On the heels of their testimony to the U.S. Senate Committee on Environment and Public Works, four members of President Obama's Cabinet have published op-ed columns in regional newspapers throughout the country. Energy Secretary Steven Chu, EPA Administrator Lisa Jackson, Interior Secretary Ken Salazar, and Agriculture Secretary Tom Vilsack each draw on their respective areas of expertise to make the case for a comprehensive energy plan that will free America from the grip of foreign oil while creating millions of jobs and reducing harmful pollution.

Excerpts from and links to the op-eds are below:

Department of Energy Secretary Steven Chu
Richmond Times-Dispatch
"Cleaning Up: Energy and Climate Bill Will Boost the Economy" (7/22)
http://www.timesdispatch.com/rtd/news/opinion/op_ed/article/ED-CHU22_20090721-173805/281278/

Over the next few months, Congress will decide on historic energy legislation that would create a generation of clean-energy jobs here in America, reduce our dependence on foreign oil, and prevent the worst effects of climate change. I believe passing a strong energy and climate bill is the single most important step we could take to secure our economic prosperity and leave a healthier planet for future generations…

President Obama is committed to signing comprehensive energy and climate legislation that will position America where the puck is going to be. The government can't solve this problem alone, but it can provide the right incentives for America's entrepreneurs, industries, and innovators to transform how we produce and use energy…

We have talked for decades about the energy problem; it is time to solve it. By passing a comprehensive energy bill that spurs a revolution in clean technologies, the United States can position itself to lead this new industrial revolution. This is our opportunity to shape our energy destiny, and we must seize it.

Environmental Protection Agency Administrator Lisa Jackson
Philadelphia Inquirer
"Agreeing on energy choices" (7/23)
http://www.philly.com/philly/opinion/20090723_Agreeing_on_energy_choices.html

Our nation's clean-energy future has been one of the most debated issues in Washington in recent months. As Congress works to pass a landmark energy and climate bill, the conversation has often fallen into a familiar pattern of right against left, and Democrats against Republicans - partisan divides that threaten to hold back necessary change.

But when I travel beyond the environs of Washington, I hear a different discussion.

People across the nation ask me about clean-energy jobs in their communities. They want to know how we can cut pollution. They are concerned that the changing climate means they won't be able to vacation on the same beaches in the years ahead, and they are eager to know if the factories in their cities can be saved by manufacturing wind turbines or solar panels. I meet Democrats and Republicans who agree that our dependence on foreign oil jeopardizes our economy and security…

Clean energy needs strong incentives and support if we are to lead the new global economy, and that's what the clean-energy bill before Congress provides. It's up to Democrats and Republicans across the nation to let lawmakers know that we need to confront economic, environmental, and security issues that affect us all. When it comes to clean energy, the American people need to show they aren't concerned about whether we follow Democrats or Republicans, as long as we lead the world.

Department of the Interior Secretary Ken Salazar
Denver Post
"The way to a new energy future" (7/19)
http://www.denverpost.com/opinionheadlines/ci_12856634

… The choice is clear, and the economic opportunities too great to miss. Will we rise to the challenge?

It is time that Washington step up to the plate, just as states like Colorado and local governments are already doing. Congress must pass strong and effective legislation that will steer our nation toward a clean energy economy that creates new jobs and improves our energy security…

American business is responding to these new opportunities. Companies are investing in wind farms off the Atlantic seacoast, solar facilities in the Southwest, and geothermal energy projects throughout the West.

We need comprehensive legislation that will create new jobs, promote investment in a new generation of energy technology, break our dependence on foreign oil, and reduce greenhouse gas emissions.

Let us rise to the energy challenges of our time.

Department of Agriculture Secretary Tom Vilsack
Des Moines Register
"Addressing climate change could revitalize rural America" (7/21)
http://www.desmoinesregister.com/article/20090721/OPINION01/907210374/1166

…This issue is too important for agriculture and forestry to sit on the sidelines. The opportunities it offers farmers and ranchers through a carbon market and a new energy economy are too promising to delay. Because, when we address climate change, we will not only fend off a looming climate crisis, but we will revitalize rural America.

The U.S. House of Representatives has passed and the Senate is considering legislation to create a viable carbon-offsets market - one that rewards farmers, ranchers and forest landowners for stewardship activities. An offsets market represents a significant economic opportunity for farm communities. Addressing climate change also has the potential to play a very important role in helping our country wean itself from foreign oil. Landowners can play an important role in providing low-carbon renewable energy…

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Traveling the Country to Announce Advanced Battery Funding

THE WHITE HOUSE

Office of the Press Secretary

FOR IMMEDIATE RELEASE

August 7, 2009

Obama Administration Officials Travel America, Talk Clean Energy Economy

WASHINGTON—Punctuated by President Obama's Wednesday announcement of $2.4 billion in Recovery Act funding for 48 new advanced battery and electric drive projects, top Administration officials fanned out across the nation this week to highlight the enormous opportunities for Americans in the emerging clean energy economy.

"The United States led the world's economies in the 20th century because we led the world in innovation. Today, the competition is keener; the challenge is tougher; and that's why innovation is more important than ever. That's the key to good, new jobs in the 21st century," President Obama told an Indiana crowd Wednesday.

All week, key members of the Administration took that message on the road.

On Monday, Energy Secretary Steven Chu joined Congressman Tim Walz in Rochester, MN, to examine three renewable energy projects including a mobile self-contained ethanol plant, cars created and adapted by students at MSU-Mankato that run on solar and electrical technology, and the IBEW Wind Turbine Training Facility where electrical workers train to service the turbines delivering clean energy to southern Minnesota.

In Longmont, CO, Tuesday, Secretary of the Interior Ken Salazar met with employees of the innovative solar panel company, Abound Solar, Inc. Abound Solar has created more than 200 'green jobs' in two years and expects to double employment by next year. A product of federal and state government support for clean energy technology innovation, three of the company's founders worked for Colorado State University before spinning off, with help from the National Science Foundation and Department of Energy.

Wednesday, as the President announced his Administration's historic investment in developing the next generation of batteries and electric vehicles, officials announced local grant recipients in communities throughout the country.

Secretary Chu visited Celgard, in Charlotte, NC, to announce a $49 million grant for the company to expand its separator production capacity to serve the expected increased demand for lithium-ion batteries from manufacturing facilities in the U.S. Celgard will be expanding its manufacturing capacity in Charlotte, NC and nearby Aiken, SC, and expects that hundreds of jobs could be created, with the first of those jobs beginning as

early as Fall 2009.

EPA Administrator Lisa Jackson was in St. Petersburg, FL, to announce a $95.5 million grant for Saft America, Inc. to construct a new plant in Jacksonville on the site of the former Cecil Field military base, to manufacture lithium-ion cells, modules and battery packs for military, industrial, and agricultural vehicles.

Commerce Secretary Gary Locke joined U.S. Rep. Emanuel Cleaver in Kansas City, Missouri, to announce a $10 million grant for Smith Electric to build and deploy up to 100 electric vehicles, including vans, pickups, and their "Newton" brand medium duty trucks. In addition, Locke announced two other grants, worth a total of more than $30 million, supporting manufacturing and educational programs in Missouri and Michigan.

Deputy Secretary of the Department of Transportation John Porcari visited East Penn Manufacturing Co., in Lyon Station, Penn., to award the company a $32.5 million grant to increase production capacity for their valve regulated lead-acid batteries and the UltraBattery, a lead-acid battery combined with a carbon supercapacitor, for micro and mild hybrid applications.

Thursday, Secretary Chu wrapped up the week's travel with an event in Cambridge, MA. At Harvard University's John F. Kennedy School of Government, Chu and Congressman Ed Markey participated in a forum to discuss the energy challenge and the opportunities to create new clean energy jobs.

##

Regional Batteries News Clips

North Carolina:

Charlotte Observer (Bruce Henderson) "Chu announces grant for energy innovation:" Energy Secretary Steven Chu announced a $49 million federal grant Wednesday to a Charlotte battery-component maker, a step toward what he called a new era of energy innovation. The grant will help Charlotte-based Celgard LLC create some 200 jobs over the next three years, the company said. Celgard makes porous membranes for rechargeable lithium-ion batteries in southern Mecklenburg County. LINK

The News & Observer (Annette Cary) "Pacific Northwest National Laboratory gets

funding for "smart grid" research:" Pacific Northwest National Laboratory will receive $5.7 million more in federal economic stimulus money. The money, which will be used on the Richland lab's work to analyze the effects of global climate change and to further develop "smart grid" technology, is in addition to $127 million already awarded under the American Recovery and Reinvestment Act. LINK

News 14 Carolina (Shawn Flynn) "Charlotte company receives stimulus for production:" A new stimulus initiative will energize hundreds of jobs in the Charlotte region. LINK

Pennsylvania:

Allentown Morning Call (Staff Written) "Berks battery-maker gets $32.5 million federal grant:" East Penn Manufacturing Co. Inc. will receive a $32.5 million grant from the U.S. Department of Energy to make high volumes of lead acid batteries for electric vehicles, John Porcari, U.S. transportation deputy secretary, announced Wednesday. The Lyons company has been making batteries for more than 63 years and will use the money to expand its product line. LINK

Reading Eagle (Mary E. Young) "Berks battery maker gets $32.5 million in stimulus funds:" A $32.5 million grant will enable East Penn Manufacturing Co. Inc. to create hundreds of new jobs and step up production of batteries for fuel-efficient vehicles, U.S. Transportation Deputy Secretary John D. Porcari said Wednesday. LINK

Missouri:

Kansas City Star (Kevin Collinson) "Area reaps benefits as U.S. promotes electric vehicles:" Kansas City got a jolt of good economic news Wednesday when a top federal official distributed millions of dollars in grants to boost the area's fledgling electric-vehicle industry. Secretary of Commerce Gary Locke announced a $10 million grant to Smith Electric Vehicles, which is about to begin assembling battery-powered delivery vans locally, and a $30 million grant to Ford Motor Co. to develop and build plug-in hybrid and electric vehicles in Kansas City and Michigan. LINK

Kansas City Star (Renee Schoof) "U.S. to spend $2.4 billion to boost electric vehicles:" Declaring that electric cars could help put Americans to work and reduce dependence on oil, President Barack Obama said Wednesday that the federal government would spend $2.4 billion in stimulus money to build batteries and get the first batch of thousands of U.S.-made electric vehicles onto the roads. LINK

Columbia Missourian (David Twiddy-AP) "U.S. Commerce chief announces electric vehicle grants:" Missouri will receive more than $15 million in federal

stimulus grants as part of a national effort to boost the battery and electric vehicle industry and create jobs. U.S. Commerce Secretary Gary Locke announced the Department of Energy grants during a visit to Kansas City on Wednesday. The Obama administration is providing $2.4 billion in stimulus funds for 48 grants in 25 states, with the biggest shares going to Indiana and Michigan to create jobs in the automotive industry. LINK

Kansas City Business Journal (Staff Written) "Stimulus grants go to Kansas City makers of hybrids, electric vehicles:" Two Kansas City vehicle-manufacturing plants received grant money Wednesday from the American Recovery and Reinvestment Act for the production of hybrid and electric vehicles. LINK

ABC Kansas City (Staff Written) "KC Gets Money For Electric Vehicles:" As part of a coordinated effort by the White House, Commerce Secretary Gary Locke announced new grants for Kansas City businesses on Wednesday. LINK

CBS Kansas City (Staff Written) "KC Company Gets $10 Million Grant:" The U.S. Department of Energy is giving a Kansas City company $10 million to produce all-electric commercial trucks. The grant to Smith Electric Vehicles U.S. Corp. was announced Wednesday. Smith plans to use the money in the construction and hiring for its new truck manufacturing plant planned near the Kansas City International Airport. LINK

Florida:

Brandon News & Tribune/Tampa Tribune (Michael Sasso) "Electric vehicles rev up officials:" Creating an efficient and affordable electric car will be a major environmental goal of the Obama administration, Environmental Protection Agency Administrator Lisa Jackson signaled Wednesday. LINK

St. Petersburg Times (David Adams & Craig Pittman) "White House announces $2.4 billion stimulus for electric car battery manufacturing:" President Obama today announced $2.4 billion in grants to accelerate the manufacturing and deployment of the next generation of U.S. batteries and electric vehicles. The announcement marks the single largest investment in advanced battery technology for hybrid and electric-drive vehicles ever made, the White House said. LINK

Tampa Bay Business Journal (Staff Written) "EPA visits St. Petersburg to announce Jacksonville project:" U.S. Environmental Protection Agency Administrator Lisa Jackson appeared at the Jim and Heather Gills YMCA in St. Petersburg Wednesday to announce the construction of a plant in Jacksonville to manufacture lithium-ion cells, modules and battery packs for military, industrial and agricultural vehicles. LINK

Ohio:

The Chronicle-Telegram (Cindy Leise) "BASF receives $24.6 million for plant expansion:" President Barack Obama wants a million plug-in electric cars on the road by 2015, and there's a good chance the chemicals inside the lithium-ion batteries for those vehicles will be produced in Elyria. On Wednesday, BASF Catalysts was awarded $24.6 million in federal stimulus money toward the cost of building a $50 million plant adjacent to its existing Elyria site so it can produce the nickel-cobalt-metal cathode material for the batteries. LINK

Columbus Dispatch (Mark Niquette) "Stimulus to fund battery project:" A $19 million expansion of a battery-recycling operation in Lancaster is planned for next year, thanks to a $9.5 million grant from federal economic-stimulus funds announced yesterday. Toxco Inc. plans a new building on its 30-acre site in Lancaster by the end of next year to recycle lithium-ion batteries used in hybrid vehicles, spokesman Todd Coy said. LINK

The Plain Dealer (Stephen Koff) "BASF Catalysts in Elyria getting stimulus funds to produce materials for electric-car battery:" The Obama administration wants to take its quest to produce low- and no-emissions cars for a spin through Lorain County, the White House announced Wednesday. BASF Catalysts in Elyria will get $24.6 million in federal stimulus money and spend a similar sum itself to produce nickel-cobalt-metal cathode material for cutting-edge lithium-ion batteries. LINK

Lancaster Eagle (Staff Written-AP) "Feds give grant for Ohio electric-car battery site:" The federal government has awarded a $24.6 million grant to help build a factory in Ohio to produce lithium-ion battery materials for electric cars. The U.S. Department of Energy announced the grant on Wednesday for the BASF chemical company's project in Elyria west of Cleveland. LINK

Meeting with Midwestern Agriculture and Manufacturing Stakeholders

THE WALL STREET JOURNAL.
WSJ.com

August 24, 2009, 3:38 PM ET

Obama Administration Courts Midwesterners on Energy, Climate

Siobhan Hughes reports on energy policy.

A high-level White House meeting today dealt with the concerns of a group that will be crucial to winning support for energy and climate legislation: Midwesterners.

The meeting involved Obama administration officials and local government and business leaders from the Midwest.

Democratic leaders are finding that resistance in the heartland is one of the biggest hurdles to Senate passage of climate-change legislation. That came into clear relief this month when a group of Senate Democrats whose votes are essential for the bill's passage told the Obama administration it would be

"difficult to support" legislation that didn't contain tariffs on goods from countries that fail to limit greenhouse-gas emissions. At the other end of Pennsylvania Avenue, President Barack Obama wants no part sending "protectionist signals."

So administration officials, especially those most trusted in the Midwest, are engaged in a charm offensive. "It was important for us to convey specific messages about what the bill contains, the studies that we've done at USDA that show it can be a net winner for farmers and ranchers," U.S. Agriculture Secretary Tom Vilsack told reporters during a break between sessions. The former Iowa governor noted the USDA has a special "outreach opportunity" thanks to its "presence around the country."

The House passed a climate bill in June – one requiring 15% of power to come from renewable sources by 2020 – and the Senate is now under pressure to start moving its bill. Senate Majority Leader Harry Reid wants the committees to finish work on the bill by Sept. 28, and is insisting that energy and climate change be dealt with in one bill.

REUTERS

U.S. needs climate law before Copenhagen: officials

Mon Aug 24, 2009 12:44pm EDT

By Ayesha Rascoe

WASHINGTON (Reuters) - The United States needs to have a climate change law in place before international talks on a climate pact begin in December, two top Obama administration officials said on Monday.

The U.S. House of Representatives narrowly passed legislation in June to cut U.S. carbon emissions from utilities, manufacturers and others 17 percent below 2005 levels by 2020.

The Senate is set to take up its own version of the bill in September when lawmakers return from their summer recess.

It is unclear whether the bill will make it into law before the international climate negotiations in Copenhagen in December. The highly contentious debate over health care reform is likely to crowd the legislative agenda in the fall.

"We think it is important for the president to be empowered to be able to say to the rest of the world that America stands ready to lead on this issue," Agriculture Secretary Tom Vilsack told reporters after an energy briefing at the White House.

Groups from the oil industry, agriculture and manufacturing have lined up to oppose climate change legislation, saying it would add costs for producers, farmers and consumers without guaranteeing environmental gains.

Vilsack and Commerce Secretary Gary Locke met with groups from the Midwest and Mid-Atlantic states to press their message that a climate change law would be good for the environment and economy.

A U.S. Agriculture Department study shows farmers could boost their net income by $10 billion to $20 billion in the long term earning money from offsets -- contracts to plant trees or change the way they till land to lock more carbon in soils, Vilsack said.

Locke pointed out that many developing countries such as China are resistant to fighting global warming, even though they are large emitters of greenhouse gases.

"The United States needs to set a very firm and clear example if we are to be successful in getting the other countries to be equally aggressive in addressing climate change," Locke said.

Vilsack warned against delays for the climate bill.

"How are we going to be able to move other nations in the same direction we want to move on trade issues or on fighting extremists if we can't deliver on climate change, when the rest of the world is moving forward?" he asked.

Working with Governors to Highlight Regional Stake on Energy and Climate

Fort Collins News Clips

Denver Post, Denver Examiner (Lynn Bartels) "Salazar vows pragmatic slant on climate":)FORT COLLINS — Interior Secretary Ken Salazar stressed Thursday that any legislation dealing with climate change must consider the impact on water and agriculture. Salazar spoke at an energy forum at Fossil Ridge High School, the first of four events the White House is hosting nationwide as Congress gets ready to resume the debate on climate change. Salazar, who served as Colorado's attorney general and U.S. senator before being tapped by President Barack Obama to oversee the Department of the Interior, said in all of his positions he has had a sign on his desk that reads "No farms, no food." Link

KCNC CBS 4, KDVR FOX 31, Denver Examiner, KUSA NBC 9 (AP) "Salazar Defends President's Energy Politics": FORT COLLINS, Colo. (AP) — Interior Secretary Ken Salazar has joined Gov. Bill Ritter and Democratic congresswoman Betsy Markey at a forum to promote President Barack Obama's clean-energy policies. Link

Coloradoan (Bobby Magill) "Salazar: Let's take renewable energy lead": The United States can fall behind the rest of the world in addressing renewable energy and climate change, or it can take the lead, Interior Secretary Ken Salazar told a large group of students and area residents at Fossil Ridge High School on Thursday. At the two-hour regional forum on President Barack Obama's "Clean Energy Economy" agenda, Salazar, Gov. Bill Ritter, Democratic Rep. Betsy Markey and representatives of the White House and the states of Washington and California stumped for future congressional climate legislation focusing on renewable energy and a reduction in greenhouse gas emissions. Ritter said his vision for such a clean energy economy in Colorado means creating an "ecosystem" in Colorado supporting research and development of renewable energy technology, something that is already quite robust here. Link

Northern Colorado 5 CBS (Staff Written) "Interior Secretary Salazar Pushes Clean Energy": It was invitation only as Interior Secretary Ken Salazar made a trip home to Colorado along with the Governor and Congresswoman Betsy Markey to discuss President Obama's clean energy policies. Secretary Salazar knows plenty well how important northern Colorado is for the future of reneweable energy, which is why he came to Fossil Ridge High School in Fort Collins to discuss the president's vision of a new energy America and how critical it is for future generations. Council on Environmental Quality Chair Nancy Sutley also joined Salazar as they met with local business owners and stakeholders in energy resources and the key role Colorado will play. And with the fourth congressional district being touted as one of the centerpieces for the energy future Representative Betsy Markey says the region leads by example. Business leaders and key stakeholders also had the opportunity to ask questions to the panel. Link

Loveland Reporter-Herald (Jon Pilsner) "Salazar, lawmakers and environmental officials bring energy to public discussion": FORT COLLINS — In the first of four national forums on the "New Energy Economy," Interior Secretary Ken Salazar, Gov. Bill Ritter and Rep. Betsy Markey, along with others, held an open forum to give residents an opportunity to chime in on that new, proposed economy. The two-hour, invitation-only forum, held at Fossil Ridge High School, was a way for President Barack Obama's administration and local government leaders to reach out to the community and share their views on the importance of new, clean and renewable energies. "This is part of what I think is a crusade of our times," Salazar said. "When you think about what will happen between now and the end of the decade, we will define the world for the next century and the world beyond. It's going to take the involvement of the American people, and because of that, we will get it done." Link

KUNC Radio (Kirk Siegler) "Salazar, Ritter Tout Federal Climate Bill": FORT

COLLINS, CO (KUNC) - Interior Secretary Ken Salazar and key Colorado democrats are defending a controversial clean energy bill pending in Congress that aims to curb greenhouse gas emissions. Those calls came at a White House forum on the so-called clean energy economy in Fort Collins Thursday. Link

Saginaw News Clips

Detroit Free Press (Tom Walsh) "Energy plan given a push as job creator:" At a forum Wednesday on the clean energy economy, three Obama administration officials and two governors put on a full-court press to pitch the White House's cap-and-trade energy plan. LINK

Detroit News (Karen Bouffard) "Feds: Plan needed to spur clean-energy jobs:" A comprehensive federal plan to limit carbon emissions is the key to creating clean-energy jobs, federal officials said Wednesday. U.S. Commerce Secretary Gary Locke and Ed Montgomery, head of the Obama administration's effort to help struggling auto communities, used the Regional Clean Energy Economy Forum here to urge Congress to develop and approve a plan that will encourage companies to invest in the clean-energy sector, and generate demand for their products. LINK

Saginaw News (Barrie Barber) "Clean energy forum brings White House leaders, governors to Saginaw:" Clean energy will power the 21st century economy and create jobs if the nation doesn't miss the opportunity to harness the potential for alternative energies, high ranking leaders said Wednesday in Saginaw. Michigan Gov. Jennifer M. Granholm, Wisconsin Gov. Jim Doyle along with U.S. Commerce Secretary Gary Locke, auto recovery czar Ed Montgomery and David Sandalow, assistant secretary of energy for policy and international affairs, pointed to the high growth industry as an economic engine for Michigan and the nation. LINK

Saginaw News (Staff Written) "Green jobs money coming to Saginaw, seven other Michigan cities:" Michigan Gov. Jennifer M. Granholm says an Energy Conservation Apprenticeship Readiness Program will train individuals from underrepresented groups in cities including Saginaw for apprenticeships in the renewable energy and energy efficiency sectors. The program is part of Granholm's Michigan Energy Corps, which is designed to put unemployed Michigan citizens back to work reducing energy costs and cleaning up Michigan's environment, she said in a news release. LINK

Milwaukee Journal Sentinel (Thomas Content) "Initiative needed to prod investment in technology:" Clean-energy policies, such as the federal energy and climate bill and a state climate bill, are needed to help open doors for entrepreneurs and prod other

companies to invest in cleaner energy technologies, Gov. Jim Doyle said Wednesday. LINK

Midland Daily News (Tony Lascari) "Clean energy forum brings together energy bill supporters:" America needs a comprehensive energy policy to promote a clean energy economy, state and federal officials said at an event today in Saginaw. U.S. Commerce Secretary Gary Locke said the country needs a policy to compete with other nations in alternative energy fields. LINK

CBS Lansing (Ann Emmerich) "Recap: Governor Hosts Town Hall:" White House officials were in Michigan talking about their goal of putting thousands back to work. They say the answer lies in a new clean energy economy, an economy they claim will grow over the next twenty years, creating tens of thousands of jobs. Governor Jennifer Granholm hosted the town hall style meeting. LINK

NBC Flint/Saginaw (Kim Russell) "White House officials speak out at energy forum in Saginaw:" Governor Jennifer Granholm and Wisconsin Governor Jim Doyle hosted White House leaders at a clean energy forum in Saginaw Wednesday afternoon. The man known as the "Car Czar" Ed Montgomery, U.S. Commerce Secretary Gary Locke, and Assistant Energy Secretary David Sandalow spoke to community and business leaders about President Barack Obama's energy plan. LINK

ABC Flint/Saginaw (Gabe Gutierrez) "Granholm hosts major energy forum:" The debate regarding United States energy policy is taking center stage in Mid-Michigan. Gov. Jennifer Granholm hosted a major energy forum that included several White House officials Wednesday afternoon. This energy push comes as the White House tries to drum up support for the president's energy bill. LINK

ABC Flint/Saginaw (Rebecca Trylch) "Dr. Ed Montgomery attends governor's energy forum at Dow Event Center:" Some of Wednesday's clean energy economy forum in Lansing focused on the role the struggling auto industry will have as the country and state turns green. LINK

CBS Flint/Saginaw (Staff Written) "Governor Holds 'Green' Forum:" Gov. Jennifer Granholm hosted a forum Wednesday to present a greener future for Mid-Michigan's economy. Granholm was joined by Obama administration officials, Wisconsin Gov. Jim Doyle and other local and state leaders. LINK

ABC Madison (Staff Written) "Doyle pushing for Federal help to grow green jobs in Wisconsin:" Governor Jim Doyle said clean energy will power the economy in the state as he pushes for federal legislation to help grow green jobs. Doyle joined other Governor's and White House leaders at a Clean Energy Forum on Wednesday. LINK

THE TIMES

PURDUE FOOTBALL

D-LINE COACH FAVORS TWO REGION PLAYERS

Neal, Short could start in 1st game

READ ABOUT THE PLAYERS IN SPORTS ON PAGE B1

Recession losing its grip?

MANUFACTURING UPTICK SPURS HOPE, SEE PAGE D1

Methodist Hospitals partners with Northwestern University

READ ABOUT THE RESIDENCY PROGRAM ON PAGE A3

Conviction doesn't end pain

Portage woman gets 45 years for murder of 82-year-old man

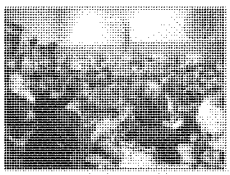
"America needs to lead this race. We need to utilize the innovation that has made America great and will lead us into our future." LISA JACKSON, U.S. EPA ADMINISTRATOR

Cohen steps down from RDA board

PUC chancellor's exit follows departure of Porter Co. appointee

COHEN

Green revolution unites labor, environmentalists



Disney on Ice comes to United Center, celebrating the animator's centennial

READ ABOUT WHAT MICKEY'S PERFORMANCES ON PAGE B1

Indiana should have sufficient H1N1 vaccine

Swine flu has been mild in the state, but officials are prepared

Police target overweight NWI steel trucks

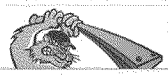
Semitrailers were carrying coils to Mich.

THE TIMES | CHICAGO SUN-TIMES | NORTHWEST INDIANA'S HOMETOWN NEWSPAPER

THIN IS IN in the deep-dish pizza city

LIFESTYLE, C1

COLLEGE FOOTBALL KICKOFF WEEK >> B3



RailCats have taste for third title >> B5

PORTER COUNTY

WEDNESDAY September 2, 2009

Post-Tribune

Good day to our readers, including valued subscriber Tom McDonald of Wanatah.

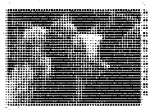
© 2009 VOLUME 99, ISSUE 336 12 NORTHWEST INDIANA'S LEADING NEWSPAPER WWW.POST-TRIB.COM

MADE IN AMERICA JOBS TOUR STOPS IN GARY

Go green

EPA Administrator Lisa Jackson >>

Nation's top environmental official visits Northwest Indiana emphasizing importance of clean energy and how it can reinvigorate manufacturing



READ GITTE LAASBY'S REPORT, A3

CHESTERTON

Emergency sirens sound loud, clear

After failing to alert residents to a coming tornado on Aug. 19, the system added five on its regular first Tuesday of the month test.

READ THE STORY, A4

PORTER COUNTY KILLING

Portage woman given 45 years

Jennifer Cook, 36, admitted she killed 82-year-old Andrew Katsolis and then attempted to make his death appear to be a suicide.

READ THE STORY, A5

READERS, NEED SOME PUBLICITY?

LEARN HOW JERRY DAVICH CAN HELP >> A3

PURDUE CAL CHANCELLOR

Cohen plans to relinquish RDA position

READ THE STORY, A3

PORTER COUNTY

No accusations against ex-priest in Baltimore

Church officials in Maryland have no record of allegations involving the former cleric who was arrested in Chicago with a 15-year-old boy.

READ THE STORY, A4

DIRECTORY

Business	B9	Neighbors	E1
Classifieds	D1	Obituaries	A12
Comics	C4	Opinion	A10
Lifestyle	C1	Sports	D1
Movies	C2	TV	C6

TODAY'S WEATHER

76° 53°

Sunny and beautiful

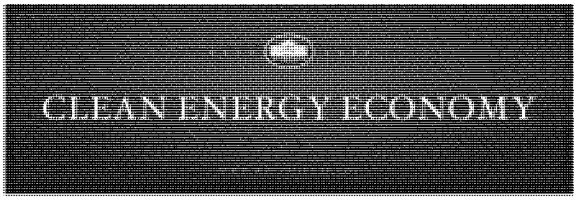
COMPLETE FORECAST, A14

Today's weather artist is Morgan Hanson of Hebron Elementary.

COMMUNITY LEADER AND IU FAN

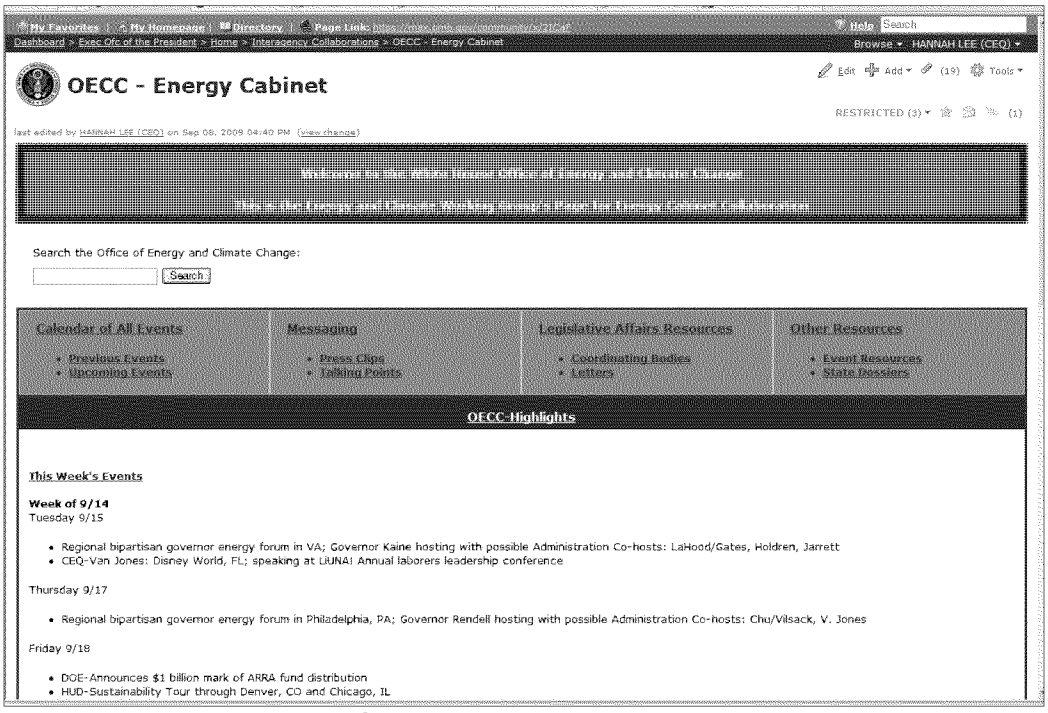
Randall Jacobs dies at 62

Valparaiso resident was an IUN professor and held high-ranking jobs at NIPSCO and several area medical centers. Page A2

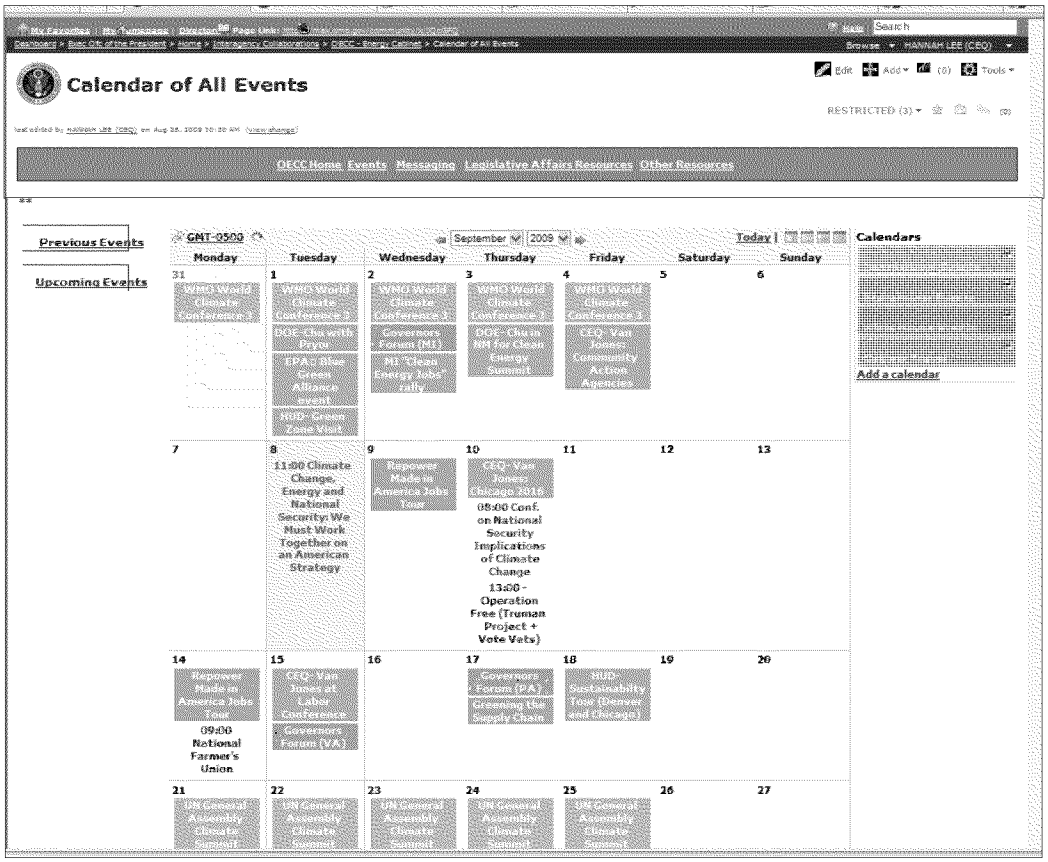


The Energy Working Group Website: OMB MAX

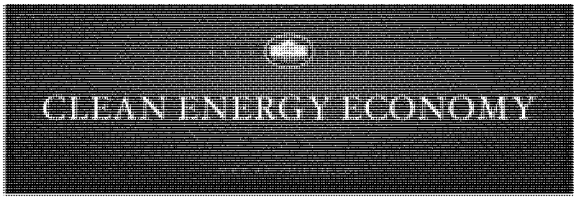
MAX is an online information-sharing tool that the Energy Working Group has been using to gather and disseminate key information. It is a way for your staff to post updates to your schedule, calendar and provide feedback on coordinated events, as well to get the most up-to-date resources from the White House. MAX has proven to be an effective tool in streamlining our communication this summer and we anticipate it will continue to reinforce our coordinated efforts as we head toward the fall and passing comprehensive energy legislation.



Home Page of the Working Group OMB MAX Website



Calendar of Events Page of the OMB MAX Website



STATE ENERGY PROFILES

Note: Seventeen State Energy Profiles have been prepared to date. Below is the profile for the State of Michigan, which provides a look into the type of information that has been gathered for states around the country.

Full copies will be provided at today's lunch.

MICHIGAN STATE ENERGY PROFILE

State Energy Profile- Michigan
Table of Contents

I. Elected Officials

A. Senators

Please see separate sheet for information

Carl Levin (D)

Debbie Stabenow (D)

B. Governor

Please see separate sheet for information

Governor Jennifer Granholm

C. Representatives - Votes in the House on ACES

Yes:
Conyers, John (D – 14)
Dingell, John D. (D – 15)
Kildee, Dale E. (D – 5)
Kilpatrick, Carolyn C. (D – 13)
Levin, Sander M. (D – 12)
Peters, Gary (D – 9)
Schauer, Mark (D – 7)
Stupak, Bart (D – 1)

No:
Camp, Dave (R – 4)
Ehlers, Vernon J. (R – 3)
Hoekstra, Peter (R – 2)
McCotter, Thaddeus G. (R – 11)
Miller, Candice S. (R – 10)
Rogers, Mike (R – 8)
Upton, Fred (R – 6)

D. Mayors -Signed Mayors Letter Supporting Climate Change Legislation

Mayor	Community	2008 Population Estimate
John Hieftje	Ann Arbor	114,386
John Godfrey III (former)	Battle Creek	52,053
Marilyn Stephan	Berkley	14,787
Daniel Paletko	Dearborn Heights	51,972
Kenneth Cockrel, Jr. (former)	Detroit	912,062
Samir Singh (former)	East Lansing	45,887
Robert Porter (former)	Ferndale	21,112
George Heartwell	Grand Rapids	193,396
Albert McGeehan	Holland	34,076
Hannah McKinney (former)	Kalamazoo	72,179
Virg Bernero	Lansing	113,968
Tony Tollefson (former)	Marquette	20,916

Susan McGillicuddy (current Supervisor)	Meridian Township	38,486
Stephen Warmington	Muskegon	39,401
James Walter (former)	Pittsfield Charter Township	34,196
Peter Strazdas	Portage	46,133
James Ellison	Royal Oak	57,110
Gretchen Driskell	Saline	5,882
Brenda Lawrence	Southfield	78,392
Norma Wurmlinger	Southgate	27,739
Robert Sisson (former)	Sturgis	10,916
Lawrence Mawby (unclear if current)	Suttons Bay	578
Cameron Priebe	Taylor	60,619
David Flaisher (former)	Township of West Bloomfield	63,852
Linda Smyka (former)	Traverse City	14,398
Mark Steenbergh (former)	Warren	133,939
Carl Solden (current Supervisor)	Waterford	70,575
Paul Schreiber	Ypsilanti	21,464

E. City Government Climate Change Activity (3 Largest Cities)

Detroit, population 912,062

- Unable to locate a Climate Change Plan

Grand Rapids, population 193,395

- According to the city's Renewable Energy webpage:
  - "The City of Grand Rapids is already a renewable-electricity leader in the State of Michigan and around the country. The City achieved Mayor Heartwell's goal of achieving 20% municipal renewable-electricity by December 31, 2008. (Increases in municipal energy efficiency helped to offset the increased direct cost of purchasing renewable-electricity.)
- Mayor Heartwell has set an ambitious new goal of 100% municipal renewable-electricity by the end of 2020. The City's Renewable Energy Team is investigating many options for a cost-effective means of achieving this goal, including municipal wind generating capacity, solar energy technology, and/or developing partnerships with others."
- In June, 2009, Grand Rapids created the Office of Energy and Sustainability to focus attention on applying energy efficiency, renewable energy, conservation, and sustainability strategies to produce measureable outcomes in a coordinated way.
- Grand Rapids also has several sustainability initiatives and a sustainability plan. The Sustainability Plan provides the policy direction in which residents, visitors, and employees within the City will receive municipal services and includes the vision of a sustainable City and community.

Warren, population 133,939

- Unable to locate a Climate Change Plan

F. ICLEI (International Council for Local Environmental Initiatives) Members

ICLEI is an international association of 1021 local governments as well as national and regional local government organizations that have made a commitment to sustainable development. ICLEI provides technical, consulting, training, and information services to build capacity for local environmental.

Ann Arbor & Washtenaw County
Clinton County
East Lansing
Ferndale
Grand Rapids
Grand Traverse County
Traverse City

G. Climate Communities Members

Climate Communities is a national coalition of cities and counties that is educating federal policymakers about the essential role of local governments in addressing climate change and promoting a strong local-federal partnership to reduce greenhouse gas emissions.

Lansing
Washtenaw County
Wyandotte

II. Michigan Energy Profile

A. Energy Overview

Natural Gas

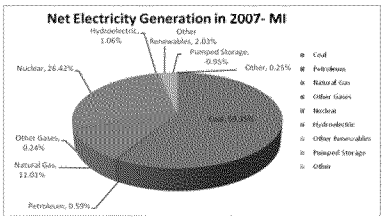
Natural gas production in Michigan is substantial. Natural gas wells are concentrated in the Antrim field in the northern portion of the Lower Peninsula. With over one-tenth of U.S. capacity, Michigan has the most underground natural gas storage capacity in the Nation and supplies natural gas to neighboring States during high-demand winter months. Driven largely by the residential sector, Michigan's natural gas consumption is high. Nearly four-fifths of Michigan households use natural gas as their primary energy source for home heating.

Coal, Electricity, and Renewables

Coal dominates electricity generation in Michigan, supplying nearly three-fifths of the market. Most of the State's coal is supplied by Wyoming and Montana and transported by rail to the western end of Lake Superior and then by ship to power plants largely located along the Great Lakes shoreline. Michigan also obtains coal, principally by rail, from eastern sources, including West Virginia, Kentucky, and Pennsylvania. Less than one-tenth of Michigan households rely on electricity as their

primary source of energy for home heating. Michigan currently has several ethanol and biodiesel production plants in operation, with many more plants currently under construction or planned.

Net Electricity Generation Profile



B. State of Michigan Activity

- Member of the Midwestern Greenhouse Gas Reduction Accord
- Michigan is a member of the Governors' Energy and Climate Coalition
- Michigan Climate Action Council was established by executive order in 2007 to develop recommendations for the state
- Michigan has a state climate plan
- Calls for reductions of 20% by 2020 and 80% by 2050 by the state and for the state to actively advocate for national legislation

C. State Renewable Energy Standard

- Union of Concerned Scientists report on Michigan RPS:

D. Electric utility companies

- EIA list of top five electricity retailers and ten largest generation facilities

Large Electricity retailers/generators in the State

- Detroit Edison Co. subsidiary of DTE Energy
  - supports an allocation based cap and trade system
  - member of CCX
- Consumers energy

  - not openly opposed to climate legislation
- Indiana Michigan Power Company, a subsidiary of American Electric Power
  - AEP supports a cap and trade system with weaker targets than Waxman Markey
  - member of CCX
- Wisconsin electric power company: subsidiary of Wisconsin Energy Corporation
  - no position on climate change/cap and trade system found

E. Climate Change Impacts

Key Issues for the Midwest Region

1. During the summer, public health and quality of life, especially in cities, will be negatively affected by increasing heat waves, reduced air quality, and increasing insect and waterborne diseases. In the winter, warming will have mixed impacts.
2. The likely increase in precipitation in winter and spring, more heavy downpours, and greater evaporation in summer would lead to more periods of both floods and water deficits.
3. While the longer growing season provides the potential for increased crop yields, increases in heat waves, floods, droughts, insects, and weeds will present increasing challenges to managing crops, livestock, and forests.
4. Native species are very likely to face increasing threats from rapidly changing climate conditions, pests, diseases, and invasive species moving in from warmer regions.
5. Average temperatures in the Midwest have risen in recent decades, with the largest increases in winter. The length of the frost-free or growing season has been extended by one week, mainly due to earlier dates for the last spring frost. Heavy downpours are now twice as frequent as they were a century ago. Both summer and winter precipitation have been above average for the last three decades, the wettest period in a century. The Midwest has experienced two record-breaking floods in the past 15 years. There has also been a decrease in lake ice, including on the Great Lakes. Since the 1980s, large heat waves have become more frequent than anytime in the last century, other than the Dust Bowl years of the 1930s. The observed patterns of temperature increases and precipitation changes are projected to continue, with larger changes expected under higher emissions scenarios.

F. Additional Energy Information

- Dow Chemical headquarters in Midland, Michigan
  - member of CCX

G. US Government Projects

- USDA Forest Service
  - Through the Recovery Act and additional investments, the USDA Forest Service is investing $2.5 million to help meet the needs of Michigan through Recovery Act funds.
  - Department of Agriculture Forest Service investments in Michigan include:
    - **The American Recovery and Reinvestment Act** includes $2.5 million for Michigan. This includes:
      - $2.5 million for implementing more sustainable materials practices and waste reduction processes.

- USDA Natural Resources Conservation Service
  - NRCS funds activities through the **Resource Conservation and Development** (RC&D) program that can support energy/climate outreach activities. The RC&D program improves the capability of State, tribal and local units of government and local nonprofit organizations in rural areas to plan, develop and carry out programs for resource conservation and development. RC&D technical and financial assistance program funds are available to areas designated by the Secretary of Agriculture. The RC&D Program has assisted many energy and climate activities with outreach elements, presented by year below with the number of projects:
    - **Michigan**; in FY2009, a CIG grant was awarded for $130,000 to fund an "Innovative Geothermal/Solar On-Farm Refrigeration Demonstration System" containing a demonstration/outreach element.
    - **Six states, including Minnesota, Iowa, and Michigan**; in FY2007, a CIG grant was awarded for $750,000 to fund "Energy" A"Syst Comprehensive Farmstead Energy Self Assessment Tool Kit: Continuation and Expansion" with a focus on energy conservation, outreach, and demonstration.
    - **Eighteen states, including Colorado, Iowa, Michigan, Minnesota, Missouri, Montana, North Carolina, and Ohio**; in FY2007, a CIG grant was awarded for $630,000 to fund "The Biofuels Acceleration Project" with a focus on energy conservation, outreach, and demonstration.
  - NRCS funds activities through the Conservation Innovation Grants (CIG) portion of the **Environmental Quality Incentives Program** (a Farm Bill authorized conservation program) that can support energy/climate outreach activities:
    - **Michigan;** in FY2008, 1 project; and FY 2006, 1 project;
- USDA Rural Development
  - USDA Rural Development provides grants and loan guarantees to rural residents, agricultural producers and rural businesses for energy efficiency and renewable energy systems, energy audits, and technical assistance; for projects ranging from biofuels to wind, solar, geothermal, methane gas recovery, advanced hydro, and biomass. The RD renewable energy and energy efficiency investments for the years 2002-2009 in the state of:
    - Michigan amounts to $4,796,147 in grants, $6,773,283 in loan guarantees, and a total of $18,700,247 in leveraged funding.

III. Green Jobs Info

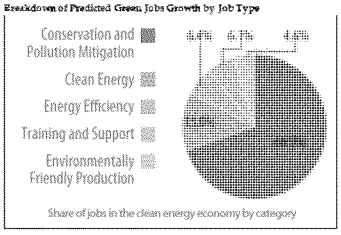
A. Green Jobs Statistics

Pew developed a clear, data-driven definition of the clean energy economy and conducted the first-ever hard count across all 50 states of the actual jobs, companies and venture capital investments that supply the growing market demand for environmentally friendly products and services.

Green Jobs Total – 22,674
Green Businesses – 1,932

Venture Capital Funds – $55,099,376
Green Patents – 746

Breakdown of Predicted Green Jobs Growth by Job Type



Conservation and Pollution Mitigation - 69.90%
Clean Energy - 13.00%
Energy Efficiency - 6.40%
Training and Support - 6.10%
Environmentally Friendly Production - 4.60%

B. Clean Energy Economy: State Ranking

Pew Trust State Fact Sheets
Jobs (2007): 22,674
Businesses (2007): 1,932
Venture Capital Funds (2006-2008)*: $55,099,376
Patents (1999-2008): 749

C. Clean Energy Job Info

AWEA job data
Existing Wind Capacity -129.395
Under Construction Capacity - 0
O&M jobs estimated -12.9695
construction jobs estimated - 0
Manufacturing jobs- 1240 (expected)

SEIA members in the state

JKing Solar Technologies, LLC- Photovoltaic Division
Complete Renewables- Concentrating Solar Power
Ford & Earl Associates- Photovoltaic Division
Fronius USA, LLC- Photovoltaic Division
LUMA Resources- Photovoltaic Division
Nabtesco Motion Control, Inc.; Concentrating Solar Power
Dow Chemical Company- Photovoltaic Division
Patriot Solar Group- Concentrating Solar Power
Bauer Power, Inc.; Solar Thermal Division
Keith Cantton- Photovoltaic Division
Community Green Energy, LLC- Photovoltaic Division
Convergence Energy, LLC- Photovoltaic Division
Caleffi Solar- Solar Thermal Division

Companies with Green Energy Jobs

A123 Systems Inc
Access Business Group
Acorn Technology
ALCO/NVC Inc
Ameridrip Kill Machining
Ann Arbor Machine Company LLC
Applegate Insulation Manufacturing Inc
Applied Process
Aristeo Construction
Axsun North America
Azure Dynamics
Basic Solar & Renewables Co LLC
Bauer Power Inc
Behr Hella Thermocontrol
Bosch Rexroth Corporation
Bradford White Corporation
BTF Solar
Cascade Engineering
Citation Corporation
Classic Glass of Battle Creek Inc
Cobasys
Cottman Electrical Equipment
Commonwealth Associates
Compact Power Inc
D&W Window
Danotek Motion Technologies
Dow Corning Corporation
Dowding Industries
Duro-Last Roofing Inc
EarthTronics Inc
Eaton Corporation
Edgewater Automation LLC
Enersx LLC
Energy Conversion Devices Inc
Event Horizon Solar & Wind
Flexcharge USA a Div of Seelye Equipment
Special
Fulgni USA, LLC
Full Spectrum Solutions
General Motors
Genex Window Inc
Gentex Corporation
Genzink Steel
Geo-Renew Systems
Geothermal Systems of Lapeer LLC
Glass & Mirror Craft Ind Inc
Glastender Inc
Gougeon Brothers Inc
Grabill Windows & Doors
Great Lakes Gear Technologies Inc
Great Way Window & Door LLC
Green Panel Inc
Guardian Industries Corp
Guardian Industries Corp

Hamilton Engineerings
Heat Controller Inc
Hemlock Semiconductor Corporation
HolidayLEDs
Hybrid Homes LLC
Hydraulic Innovations
Burnisys
Infinity Electric
Insulspan
Johnson Controls
Johnston Boiler Company
K & M Machine Fabricating Inc
Kaydon Bearings
Kraft Power
Lizard Lighting
MAG Hessapp
Marzam Electric LLC
Merrill Fabricators
Michigan Windpower
Midwest Circuits
Midwest Glass Fabricators
Milliken Millwork Inc
MLC Window Co Inc
Mr Endosure Sunrooms
Nichia America Corporation
North American Biofuels
Nu-Wool Company Incorporated
ODL Incorporated
Osram Opto Semiconductors Inc
Paramount Improvements
PDC Glass
Pilkington
Polar Seal Windows Corporation
ProLight Inc
Renewable Energy Solutions
Self Reliant Energy Company
SKF Group
SoundOff Signal
Sundu Solar LLC
Sunrise Windows, Ltd
Sunskaray
Superiorland Vinyl Windows
Taylor Building Products Inc
The Delfield Company
TSNergy Inc
Unisnerco
United Solar Ovonic
Valeo SA
Versabright
Vinyl Sash of Flint Inc
Wallside Windows
Weather King Windows & Doors Inc
WeatherGard Window Company
Whirlpool Corporation
Wilcox Professional Services LLC
Williams Form Engineering Corporation
Wind Power Services LLC
Wolverine Glass Products
XUS Corporation

Other Organizations Supporting ACES in Michigan

- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) Letter to House of Representatives on June 26, 2009
- American Public Health Association (APHA) Letter to Representative Waxman and Representative Markey on June 23, 2009
- American Wind Energy Association (AWEA) Statement on the bill
- Blue Green Alliance, United Steelworkers (USW), Service Employees International Union (SEIU), Laborers' International Union of North America (LIUNA), Natural Resources Defense Council (NRDC), Communications Workers of America (CWA) Letter to House of Representatives on June 22, 2009

- Clean Economy Network including Applied Materials, Aspen Snowmass, Austin Energy, Avista, Bar Cliff, Duke Energy, Ebay, Exelon, FPL Group, Kleiner Perkins Caulfield and Byers, Levi Strauss & Co –National Grid, HP, NRG, PG&E, PSEG, Seventh Generation, Starbucks and Symantec Letter to President and Congress
- Clean Energy Group Letter to Representative Waxman and Representative Markey on June 25, 2009
- Conference of Catholic Bishops Letter to House of Representatives on June 22, 2009
- The Dow Chemical Company Letter to Representative Nancy Pelosi on June 23, 2009
- GE Letter to Representative Nancy Pelosi on June 19, 2009
- Alliance for Climate Protection, American Rivers, Center for American Progress Action Fund, Ceres, Clean Water Action, Climate Solutions, Defenders of Wildlife, Environment America, Environmental Defense Fund, Environmental Law & Policy Center, Environmental Working Group, Fresh Energy, Interfaith Power and Light, League of Conservation Voters, League of Women Voters of the United States, National Audubon Society, National Parks Conservation Association, The National Hispanic Environmental Council, National Wildlife Federation, Natural Resources Defense Council, Oceana, Oxfam America, Pew Environment Group, Sierra Club, Southern Alliance for Clean Energy, Southern Environmental Law Center, The Nature Conservancy, The Wilderness Society, Union of Concerned Scientists Letter to House of Representatives on June 23, 2009
- International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths and Forgers and Helpers Letter to House of Representatives on June 25, 2009
- National Association of Clean Air Agencies (NACAA) Letter to House of Representatives on June 23, 2009
- National Rural Electric Cooperative Association Letter to Representative Waxman on June 23, 2009
- International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Letter to House of Representatives on June 24, 2009
- US Conference of Mayors Letter to Colleagues on June 24, 2009
- Governors Letter on May 21, 2009

D. District Specific Jobs Information

"The Economic Benefits of Investing in Clean Energy: How the Economic Stimulus Program and New Legislation Can Boost U.S. Economic Growth and Employment," assesses the cumulative economic impact of the clean-energy aspects of ACES and ARRA and estimates the employment effects of the $150 billion in annual public and especially private clean-energy investment they are likely to encourage.

15th District (Covers Detroit and many suburbs of Detroit)

Benefits from a Clean-Energy Investment Program for Low-Income Household

- New Jobs Created – 3,597 new jobs overall; 1,746 jobs for workers w/ high school degrees or less
- Falling unemployment produces rising – earnings could rise 2% for low-income workers as unemployment in MI's 15th district falls by 1%
- Benefits of Retrofitting buildings – retrofits could reduce living costs by up to 4%
- Improved public transportation – increasing public transit use could reduce living costs by 1-4% for households near urban centers; household that forego the use of one car could reduce living costs by about 10%

Net Employment Expansion Through $332 Million Shift From Fossil Fuels to Clean Energy

- Job creation - 3,597 jobs
- Unemployment rate before clean-energy investments – 7.7%
- Unemployment rate after clean-energy investments – 6.7%

Breakdown of Net Job Expansion by Formal Education Credentials

- College-Degree Jobs: BA or above; $27.60 average wage → 735 (20.4% of clean-energy jobs)
- Some College Jobs: some college but not BA; $14.00 average wage → 1,116 (31.0% of clean-energy jobs)
- High-School or less jobs: high school degree or less; $12.50 average wage → 1,746 (48.5% of clean-energy jobs)
- High-School or less jobs with decent earnings potential: $15.80 average wage → 1,395 (38.8% of clean-energy jobs)

Detroit Metropolitan Area

Benefits from a Clean-Energy Investment Program for Low-Income Household

- New Jobs Created – 25,880 new jobs overall; 11,312 jobs for workers w/ high school degrees or less
- Falling unemployment produces rising – earnings could rise 5.5% for low-income workers as unemployment in the Detroit Metro Area falls by 2.8%
- Benefits of Retrofitting buildings – retrofits could reduce living costs by up to 4%
- Improved public transportation – increasing public transit use could reduce living costs by 1-4% for households near urban centers; household that forego the use of one car could reduce living costs by about 10%

Clean Energy Economy Notes

- Michigan could see a net increase of about $4.5 billion in investment revenue and 54,000 jobs based on its share of a total of $150 billion in clean-energy investments annually across the country (http://www.americanprogress.org/issues/2009/06/clean_energy_factsheets.html)
- Adding 54,000 jobs to the Michigan labor market in 2008 would have brought the state's unemployment rate down to 7.3 percent from its actual 2008 level of 8.4 percent (http://www.americanprogress.org/issues/2009/06/clean_energy_factsheets.html)
- MI is one of only seven states and the District of Columbia where total jobs fell but jobs in the clean energy economy increased between 1998 and 2007
- The renewable portfolio standard enacted by MI lawmakers last fall will encourage more growth in the Clean Energy jobs category in particular
- MI ranks third in clean technology patents over the past 10 years and attracted $55 million in clean tech venture capital in the past three years

US Global Change Climate Impacts Report (6/09)

Model projections of summer average temperature and precipitation changes in Illinois and Michigan for midcentury (2040-2059), and end-of-century (2080-2099), indicate that summers in these states are expected to feel progressively more like summers currently experienced in states south and west. Both states are projected to get considerably warmer and have less summer precipitation.

IV. Media Coverage

A. Op-Eds and News

- Detroit Free Press (MI) 7/24 "Cap-and-trade comes with costs"
- Bay City Times (MI)7/22 "Cap-and-trade is a tax-increasing, job-killing bill"
- Bay City Times (MI) 7/21 "Cap-and-Trade bill is good for farmers"
- Holland Sentinel (MI) 7/20 My take: Cap and trade: Not the full story on global warming
- Detroit Free Press (MI) 7/12: Better to invest now to slow warming than risk calamity
- Jackson Citizen Patriot (MI) 7/7: America will pay with cap and trade

B. Media Markets

Michigan Newspapers by circulation

Publication Name	Frequency	Circulation Type	Total Circulation*
FREE PRESS, DETROIT (WAYNE CO.)	AVG M (M-F)	DLY	290,730
NEWS, DETROIT (WAYNE CO.)	AVG M (M-F)	DLY	169,748
PRESS, GRAND RAPIDS (KENT CO.)	AVG E (M-F)	DLY	114,118
JOURNAL, FLINT (GENESEE CO.)	AVG E (M-F)	DLY	71,069
OAKLAND PRESS, PONTIAC (OAKLAND CO.)	AVG M (M-F)	DLY	66,264
STATE JOURNAL, LANSING-EAST LANSING (INGHAM CO.)	AVG M (M-F)	DLY	53,671
MACOMB DAILY, MOUNT CLEMENS (MACOMB CO.)	AVG M (M-F)	DLY	47,820
GAZETTE, KALAMAZOO (KALAMAZOO CO.)	AVG E (M-F)	DLY	45,940
NEWS, ANN ARBOR (WASHTENAW CO.)	AVG E (M-F)	DLY	44,291
CHRONICLE, MUSKEGON (MUSKEGON CO.)	AVG E (M-F)	DLY	37,295
NEWS, SAGINAW (SAGINAW CO.)	AVG E (M-F)	DLY	34,993
CITIZEN PATRIOT, JACKSON (JACKSON CO.)	E (M-SAT)	DLY	28,313
TIMES, BAY CITY (BAY CO.)	AVG E (M-F)	DLY	27,688

Michigan Top Radio Stations in five largest metros areas

***Number is percentage of people listening to the radio that are listening to this station**

Detroit, MI

Station	Format	SU08
WMXD-FM	Urban Adult Contemporary	6.9
WJR-AM	News Talk Information	5.6
WVMV-FM	New AC (NAC)/Smooth Jazz	5.4
WILB-FM	Urban Contemporary	5.2
WKQI-FM	Pop Contemporary Hit Radio	5.0
WWJ-AM	All News	5.0
WOMC-FM	Oldies	4.4
WYCD-FM	Country	3.9
WDVD-FM	Hot Adult Contemporary	3.7
WRIF-FM	Active Rock	3.4

Grand Rapids, MI

Station	Format	WI09
WOOD-AM	News Talk Information	8.9
WBCT-FM	Country	6.8
WGRD-FM	Alternative	5.9
WLAV-FM	Classic Rock	5.7
WHNN-FM	Pop Contemporary Hit Radio	5.0
WLHT-FM	Adult Contemporary	4.2
WFGR-FM	Oldies	4.0
WOOD-FM	Adult Contemporary	3.4
WTRV-FM	Soft Adult Contemporary	3.2
WHTS-FM	Adult Hits	2.9

Flint, MI

Station	Format	FA09
WDZZ-FM	Urban Adult Contemporary	9.1

WCRZ-FM	Adult Contemporary	8.6
WHNN-FM	Classic Hits	6.5
WRSR-FM	Classic Rock	6.3
WWCK-FM	Pop Contemporary Hit Radio	6.1
WWBN-FM	Active Rock	5.6
WFBE-FM	Country	4.3
WRCL-FM	Rhythmic Contemporary Hit Radio	4.3
WKCQ-FM	Country	3.7
WJR-AM	News Talk Information	3.5

Lansing, MI

Station	Format	FA08
WITL-FM	Country	12.0
WFMK-FM	Adult Contemporary	8.6
WJIM-FM	Pop Contemporary Hit Radio	8.4
WMMQ-FM	Classic Rock	7.5
WJXQ-FM	Album Oriented Rock	5.2
WQHH-FM	Urban Contemporary	5.2
WQTX-FM	Classic Hits	3.7
WHZZ-FM	Adult Hits	3.4
WJIM-AM	News Talk Information	3.4
WJZL-FM	New AC (NAC)/Smooth Jazz	2.4

Michigan TV Stations

City	Call	Network	Station
Allendale	WTLJ	TCT	
Alpena	WBKB	CBS	11
Alpena	WCML	PBS	06
Ann Arbor	WPXD	PAX	31

Battle Creek	WOTV	ABC	41
Battle Creek	WOBC WXSP*	UPN	20
Cadillac	WFQX	FOX	33
Cadillac	WCMV	PBS	27
Calumet	WBKP	ABC	05
Clio	WEYI	NBC	25
Detroit (Southfield)	WWJ	CBS	62
Detroit (Southfield)	WXYZ	ABC	07
Detroit (Southfield)	WLPC	CTN	28
Detroit (Southfield)	WJBK	FOX	02
Detroit	WBXD-CA	MTV2	23
Detroit	WDIV	NBC	04
Detroit	WTVS	PBS	56
Detroit	WDWO	TCT	18
Detroit (Southfield)	WKBD	UPN	50
Detroit (Southfield)	WDWB	WB	20
Escanaba	WJMN WFRV*	CBS	03
East Lansing	WKAR	PBS	23
Flint	WJRT	ABC	12
Flint	WSMH	FOX	66
Flint	WFUM	PBS	28
Grand Rapids	WZZM	ABC	13
Grand Rapids	WXMI	FOX	17
Grand Rapids	WZPX	PAX	43
Grand Rapids	WOOD	NBC	08
Grand Rapids	WGVU	PBS	35
Grand Rapids	WXSP	UPN	15
City	Call	Network	Sta

Ishpeming	WBUP WBKP*	ABC	10
Jackson	WHTV	UPN	18
Kalamazoo	WWMT	CBS	03
Kalamazoo	WGVK	PBS	52
Lansing	WLAJ	ABC	53
Lansing	WLNS	CBS	06
Lansing	WSYM	FOX	47
Lansing (Onondaga)	WILX	NBC	10
Manistee	WCMW	PBS	21
Mount Clemens	WADL	Ind	38
Mount Pleasant	WCMU	PBS	14
Negaunee	WLUC	NBC	06
Saginaw (Bay City)	WNEM	CBS	05
Saginaw	WAQP	TCT	49
Sault Sainte Marie	WWUP	CBS	10
Sault Sainte Marie	WGTQ	ABC	10
Traverse City	WGTU	ABC	29
Traverse City	WWTV	CBS	09
Traverse City	WPBN	NBC	07
Traverse City	WTOM	NBC	04

V. EOP Notes

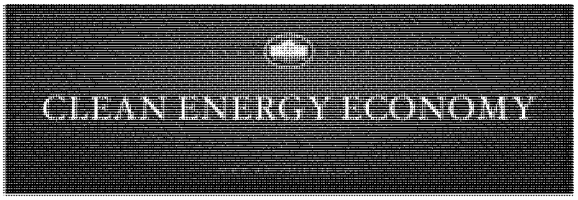
A. Administration Activity in State

Past Events

5/11/09 – DOL in Michigan – Global Wind Systems, Labor Leaders, and Governor Granholm
5/13/09 – EDU in Detroit - Detroit Trip – United way Key Note
5/25/09 DHS in Detroit - TOUR DETROIT WINDSOR TUNNEL, then went to Canada
6/2/09 DOC - Auto Recovery Trip – Ohio, Michigan
6/3/09 DOL - Auto Communities Tour in OH, MI
6/12/09 DOT in Kalamazoo - Loy Norrix High School
6/16/09 DOC in Detroit CEO meeting, The National Summit

B. Administration Contacts in the State

Last	First	Agency	Position	Born/Resident	Email
Groves	Robert	DOC	Director of Bureau of Census	Resident	bgroves@gr.umich.edu
Shah	Rajiv	USDA	Under Secretary Research, Education and Economics	Born: Ann Arbor	raj.shah@gatesfoundation.org



The New York Times

EDITORIAL

Another Astroturf Campaign

Published: September 3, 2009

It was probably only a matter of time, but the oil lobby has taken a page from the anti-health-care-reform manual in an effort to drum up opposition to climate change legislation in Congress. Behind the overall effort — billed, naturally, as a grass-roots citizen movement — lie the string-pullers at the American Petroleum Institute, the industry's main trade organization and a wily, well-funded veteran of the legislative wars.

Greenpeace, the advocacy group, uncovered a letter last month from the A.P.I. president, Jack Gerard, to industry C.E.O.'s revealing that the campaign's central objective is to "put a human face on the impacts of unsound energy policy," specifically the Waxman-Markey bill recently passed by the House.

The Waxman-Markey bill seeks a 17 percent reduction in greenhouse gas emissions by 2020, partly by requiring emitters like power plants and oil refineries to invest in cleaner technologies or, if they cannot reduce their own emissions, to buy permits from companies that can. Either way, the bill will saddle polluters with new costs. The Senate will take up its own version of the bill this month.

So far, A.P.I. has organized nearly 20 rallies in oil-producing centers like Houston and smaller Rust Belt towns like Lima, Ohio, and Elkhart, Ind. The immediate audience typically consists of several hundred local residents, and the atmosphere is festive — marching bands and hot dogs. The ultimate audience is fence-sitting senators who may be persuaded to reshape the House bill to the industry's liking or vote against it altogether.

Local residents are not, of course, invited to debate the consequences of global warming, or dwell upon those parts of the bill that could lead to a whole new industry — and the jobs that would go with it — based on alternative energy sources, or to a future in which people save money by buying more fuel-efficient cars. The narrative they get is one of unrelenting gloom —unaffordable gasoline, stratospheric home heating bills and shuttered industries.

One can always expect hyperbole from Washington lobbyists when billions are at stake, but two elements of the industry's campaign are particularly annoying. One is the assertion that Waxman-Markey will inevitably mean $4-a-gallon gasoline. Two reputable studies of the bill — by the Environmental Protection Agency and the Energy Information Administration — say that gasoline prices will increase by about 20 cents a gallon at most by 2020, an estimate that does not account for the effects of new investments in clean vehicle technology.

The second claim is that the bill treats the oil industry unfairly compared with, say, the electric utilities. But the bill does not prevent the oil companies from passing along whatever costs they incur to consumers. And let's not forget that over the years few industries have profited as handsomely from government policies as the oil and gas industries.

What the oil companies are probably worried about is that people and industries will use less of their product as alternatives appear and consumers become more energy-efficient. But isn't that the point of the exercise?

Request for Administrator Jackson to Call Secretary Salazar
On the Bureau of Land Management's Red Devil Mine Site
Candidate for September 2009 Proposed Superfund National Priorities List (NPL)

Issue: Deliberative

Deliberative

Summary of Site

- Large former mercury mine and retort site in remote area of western Alaska, entirely on Bureau of Land Management (BLM) land.
- NPL Caliber based on Hazard Ranking System score.
- Current exposures to native populations from subsistence fishing, fish consumption advisory in Kuskokwim River, and local subsistence fishing in Red Devil Creek to mercury.
- A fish advisory is in effect, warning children, pregnant women and women who could become pregnant to limit their consumption of fish.
- History of inadequate funding and lack of progress by BLM.
- BLM has indicated that there are no viable Potentially Responsible Parties.

Positions of Interested Parties

Deliberative

Major BLM/DOI issues

Deliberative

Deliberative

Potential options:

Deliberative

Attachment

Red Devil Timeline 09/09/2009

Deliberative

Request for Administrator Jackson to Call Secretary Salazar
On the Bureau of Land Management's Red Devil Mine Site
Candidate for September 2009 Proposed Superfund National Priorities List (NPL)

Issue: Deliberative

Deliberative

Summary of Site

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Deliberative

Major BLM/DOI issues

Deliberative

Deliberative

Potential options:

Deliberative

Attachment

Red Devil Timeline 09/09/2009

Deliberative

34. [THIS REWRITES KEY PIECES OF SECTION III.H TO INDICATE HOW THE DISCUSSION OF PRIVATE NET SAVINGS SHOULD BE DISCUSSED IN THE CONTEXT OF BENEFITS AND COSTS. THESE SECTIONS AND A REWORKING OF RELEVANT TABLES SHOULD BE SUBSTITUTED IN AT THE RELEVANT POINTS INTO NHTSA'S SECTION IV AS WELL]

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Memo on Border Taxes and Output-Based Rebates

Deliberative

Deliberative

Sector Eligibility and Resource Requirements for Title IV of H.R. 2454
EPA Preliminary Estimates 09/11/09

Deliberative

Part I: Presumptively Eligible Sectors and Emissions; All Data Average 2004-2006; Emissions Data Reported in $MMTCO_2e$

2002 NAICS Code in ASM	2002 NAICS Title	Total value of shipments ($1,000)	Energy Intensity	GHG Intensity	Trade Intensity	Direct Combustion Emissions	Direct Process Emissions	Indirect Electricity Emissions	Total Emissions (MMTCO2)

Deliberative

Part II: Resource Requirements

Allowances Summary Table	Direct (Coal,Natural Gas,Process, Petrol) MMTCO2e	Indirect (Electricity) MMTCO2e	Total Emissions MMTCO2e

Deliberative

Date: August 24, 2009
Re: EPA and Industry Analyses of Energy Intensive-Trade Exposed Sectors
From: U.S. EPA Office of Air & Radiation, Office of Atmospheric Programs

Deliberative

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U.S. Environmental Protection Agency
Office of Atmospheric Programs

EPA Analysis of the Senate Finance Climate Change Proposal in the *111th Congress*

9/1/09

Global Results:
Trade Impacts & Emissions Leakage

Trade Impacts:
Energy Intensive Manufacturing Sector Output
(ADAGE)

Deliberative

Trade Impacts:
Energy Intensive Manufacturing Sector Imports

(ADAGE)

Deliberative

Trade Impacts: Emissions Leakage

(ADAGE)

Deliberative

Allocations to Energy-Intensive Trade-Exposed Industries

August 2009
Pre-decisional and deliberative

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Personal Privacy

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